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TRANSCRIPT

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MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Phil Andrews, President

Councilmember Roger Berliner, Vice President

Councilmember Marc Elrich

Councilmember Nancy Floreen

Councilmember Michael Knapp

Councilmember Duchy Trachtenberg



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**COUNCIL PRESIDENT ANDREWS:**

Good morning, everybody. Please have a seat. We're going to go ahead and get started. We have a tight schedule this morning, and we have a very important proclamation to give to leaders of various public safety agencies, and we know that they are on tight schedules, and we want to respect their time and thank them for all being here. We are going to start, though, with an invocation from Reverend Dr. Rosetta Robinson of the Interfaith Works of Rockville. Reverend Robinson. Please stand.

**REVEREND DR. ROBINSON:**

Shall we pray? God of our heritage, God of all creation, God who cares about all of us - the least, the lost, those who have and those who have not. O God, we pray this morning that the Montgomery County Council would take this inauguration year to heart, of change, and remember the words of Hubert Humphrey, the late the Vice President, that the greatest test of a nation is the way it takes care of the sick, the vulnerable, the elderly, the weak, the poor. May this be a year that we all will be beneficiaries, many, many more, of the blessings that we have received in Montgomery County. Amen.

**ATTENDEES:**

Amen.

**COUNCIL PRESIDENT ANDREWS:**

Thank you very much. Let me announce at the beginning that Councilmember Leventhal is not going to be with us today. He is recovering from surgery. Councilmember Praisner is ill, and Councilmember Ervin is working on a project in Washington related to the school system. And so we have a reduced complement today, and we will proceed along. But first, we're going to start with a ceremony to recognize the terrific work that was done related to the water main break on River Road on December 23, and I would like Council Vice President Roger Berliner and County Executive Ike Leggett to join me at the front.

**COUNCIL PRESIDENT ANDREWS:**

Good morning, Mr. Executive.

**COUNCIL EXECUTIVE LEGGETT:**

Good morning.

**COUNCIL PRESIDENT ANDREWS:**

Nice to see you again. We who live in this area know that we have the finest emergency response agencies in the world, and that is recognized by the fact that they are often called on to go elsewhere when there are other disasters in other parts of the country. Well, on December 23, we had our own severe emergency situation with the water main break - the 66-inch water main that broke on River Road that put a number of lives in



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peril, including those of the emergency responders. We want to recognize them today. I'd like everybody to watch your screen for a minute to see just what I am talking about.

**RICHARD BOWERS:**

What you are looking at right now is the actual incident on River Road with the 66-inch water main break that unexpectedly, without notice, obviously, ruptured and sent 3 to 4 feet of cascading water uncontrolled at a high velocity down River Road. And our first responders - as you can see, some of them directly in the water - were met with debris that was rushing with the water downstream. We had victims in cars that were trapped because of the environmental conditions in which - it was very cold that day, and the windows on the vehicles actually froze, some of them halfway up where water was actually coming in. Some of the doors were frozen. So it was extremely difficult in terms of environmental conditions, and some rescues were made not only by foot or land, if you will, some were made by boat. You can see the treacherous footing and the treacherous conditions that the first responders that responded to this had to face. Not only did we have land and boat rescue operations, but we also had air rescue, and that was extremely dangerous, to be able to, if you will, thread the needle with a rescue basket down through a very narrow pathway on which there were power lines that at any minute could have contacted the basket or, god forbid, fallen over and gone right into the water and electrocuted any of the victims or even our first responders. As I've said before, publicly and to our personnel that responded, this was a life-and-death situation for our citizens that were trapped in the vehicles, as well as for our first responders. And without the necessary training, the equipment, and certainly in the investment that has been made there, and a lot of guts, we would not have had a successful outcome. And it really is about the troops that did the work here, so the purpose of honoring Fire and Rescue, as well as the other public safety agencies, is very appropriate, and I thank you all very much for doing that.

**COUNCIL PRESIDENT ANDREWS:**

Thank you. That's Chief Bowers of our Fire and Rescue service. Thank you very much, and thank you to Channel 9 for providing that dramatic footage which we saw that day, that morning. I would like to have the representatives of the agencies that were involved in the rescue join us here at the front. Chief Bowers from our Fire and Rescue Service, Chief Manger from our Montgomery County Police Department, Maryland State Police Colonel Terrence Sheridan, U.S. Park Police Chief Salvatore Lauro, the Naval Surface Weapons Center - Carderock Division Captain, Mark Thomas, and Fairfax County Fire and Rescue Battalion Chief Robert Zoldos, who's representing Chief Ron Mastin. We're going to do things just a little differently than we normally do because we have a number of gentlemen up here who are having to leave quickly to go to other important meetings, and so I'm going to give out the proclamation, and then we'll take a couple of pictures, and then I'll see if people would like to make some remarks. I think the cooperation that was



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evidenced that day was truly impressive, between the teamwork that was done, and it was an extremely impressive response. Thank you all for the great leadership that your agencies showed that day and the work in the field by the officers who responded. The first proclamation is to the Montgomery County Fire and Rescue Service, and, Chief Bowers, please accept on behalf.

RICHARD BOWERS:

Thank you very much.

COUNTY EXECUTIVE LEGGETT:

Thank you.

COUNCIL PRESIDENT ANDREWS:

And we'll do a group shot in just a little bit. Maryland County Police Chief Tom Manger representing the Police Department. Thank you. The Maryland State Police, represented by Colonel Sheridan. Thank you very much.

TERRENCE SHERIDAN:

Appreciate it. Thank you.

COUNCIL PRESIDENT ANDREWS:

The United States Park Police, and they are represented by Salvatore Lauro.

UNKNOWN SPEAKER:

He's not here.

COUNCIL PRESIDENT ANDREWS:

He's not here yet. OK. The Carderock Division of the Naval Surface Weapons Center, represented by Captain Thomas.

MARK THOMAS:

Yes, sir.

COUNCIL PRESIDENT ANDREWS:

Thank you very much.

MARK THOMAS:

Thank you very much. Thank you, sir.

COUNTY EXECUTIVE LEGGETT:

Thank you.



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COUNCIL PRESIDENT ANDREWS:

And the Fairfax County Fire and Rescue Service, represented by Battalion Chief Robert Zoldos, who's representing Chief Ron Mastin. Thank you very much.

BATTALION CHIEF ZOLDOS:

Thank you.

COUNCIL PRESIDENT ANDREWS:

Thank you. All right. Now, this is the tough – this is sometimes tougher. The toughest part is to get everybody in the same shot. All right. This is a proclamation from County Executive Ike Leggett and myself, on behalf of the County Council, and it reads, "Whereas, at about 8 A.M. on December 23, 2008, a 66-inch water main ruptured in the Bethesda/Potomac area of Montgomery County, turning River Road into an appropriately named fast-moving, rising 3- to 4-foot-high torrent of icy water that trapped unsuspecting commuters of all ages in their cars during the morning rush hour, and whereas, many of the terrified drivers and their passengers had few alternatives in their desperate attempt to reach safety as frigid water filled their stalled vehicles and freezing temperatures complicated their plight, which presented a life-and-death situation to both civilians and fire fighters, and whereas the rapid, heroic response by a unified team of rescuers from the Montgomery County Fire and Rescue Service, Montgomery County Police, Maryland State Police, U.S. Park Police, the Fairfax County Fire and Rescue Service, and the Carderock Division of the Naval Surface Warfare Center led to all endangered individuals being safely removed from their vehicles, either by boat, helicopter, or other courageous efforts, and whereas this incident again demonstrated what we already knew – that the residents of Montgomery County and the Washington region are protected by the world's best united team of emergency rescue personnel, a team whose courage, skills, training, expertise and ability to be at its best in the worst of situations is unmatched. Now therefore do we – Isiah Leggett as County Executive and Phil Andrews as County Council President – hereby salute the United States Park Police, the Montgomery County Police, the Fire and Rescue Service, the Fairfax County Rescue Service, the Maryland State Police, and the Carderock Division of the Fire Service, too, for their efforts. And it's further resolved that all those who united in the rescue on River Road have once more earned the thanks and admiration of all those they protect on a daily basis, and especially for their efforts on December 23, 2008. Signed this day by County Executive Isiah Leggett and myself. And we thank everybody up here, and we thank everybody who is in the audience who is part of these agencies and all those in those agencies who could not be here today but who do that day-in and day-out work to help keep us safe and respond in emergencies so well and so bravely. And thank you for all of your great efforts. I want to note that we have representatives. We have the representative, the president of the Montgomery County Volunteer Fire and Rescue Association, which was also involved that day. We have the



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Chief of the Career Fire Fighters, John Sparks, leading his troops, and we have many other fine leaders here representing the front line. And thank you for all that you do.

PHOTOGRAPHER:

Now, if you could get everybody – we have a number of cameras, so we need – I need to be able to see everybody, so if you're behind somebody, just find a space.

COUNCIL PRESIDENT ANDREWS:

All right? OK?

RICHARD BOWERS:

We're going to back right up here.

COUNCIL PRESIDENT ANDREWS:

Why don't you hold up that proclamation?

PHOTOGRAPHER:

OK. That looks pretty good. So be patient and smile... It's a good occasion. OK. Couple more. OK. Everybody OK? Thank you very much.

COUNCIL PRESIDENT ANDREWS:

Thank you. County Executive Leggett, would you like to say a few words?

COUNTY EXECUTIVE LEGGETT:

Yes, just a few words. First of all, I thank all of you for coming out today and thank all of our Fire and Rescue services, all of those who helped make this possible. In addition to all of those mentioned that was mentioned by Phil, the State of Maryland, the Governor's office, the Washington Suburban Sanitary Commission, and many others also were instrumental in helping us to make this day possible. I know that this was a perilous situation for a large number of citizens. We've committed to redoubling our efforts to make certain that we eliminate or reduce or mitigate as best possible the chances that this could occur again. We had a heroic effort by a large number of people, but the most important thing for us in the future is to try to avoid this altogether. I am delighted that so many people participated in this, although I had a little bit of a hesitation when I got down to Fairfax County and I had to sign the proclamation with "Fairfax" on it, but I recognize that we have this neighborly cooperation and support, and believe it or not, we had strong support from Fairfax County helping Montgomery County, as well. And I passed my words on to Commissioner Connolly and others to let them know how much we appreciate their efforts and support. Thank you very much.



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COUNCIL PRESIDENT ANDREWS:

Thank you.

COUNTY EXECUTIVE LEGGETT:

Roger?

COUNCIL VICE PRESIDENT BERLINER:

Let me just say, on behalf of the people of the First District in Montgomery County, which is the River Road and Bethesda/Potomac area, how grateful I am that these folks were there in the way in which they were there. It was life and death. I was called with respect to this as I was going to pick up my mom at the airport, and people were saying, "A water main broke." And I said, "Oh, OK, well, that happens." "No, no, you don't get it. There's 5 feet of water cascading, and it is life and death." And so I'm so grateful that you were there. I only wish that some of the people that you saved could have been here today with us, because they would have been far more eloquent than we are in expressing our gratitude. So let me simply say, thank you.

COUNCIL PRESIDENT ANDREWS:

Thank you. Chief Bowers, would you like to say a few words?

RICHARD BOWERS:

Thank you, Mr. Andrews, and County Executive Leggett. First, I think it's most appropriate to recognize and thank the troops that responded. And certainly the recognition today is extremely important to them, and we appreciate it from the Council as well as from the Executive, for this recognition. Certainly want to thank the public agencies that came together very, very quickly to mitigate this incident. I would be remiss if I didn't recognize our command staff who are standing up there, if you don't mind stepping forward - Chief Miller, R.E. Chief Seavey, and Chief Resnick. They did a fantastic job that day. The troops' lives, if you will, were in their hands, and you all did a magnificent job. Without the training, without the equipment, without the personnel, and without a lot of guts, this would not have been a successful incident. Certainly the investment that the County Executive and the Council has made has proven positive results here. So we thank you. I thank my colleagues, certainly, from Fairfax, too, for their support during the incident. My colleagues – they're still out here in the audience, but certainly behind me – thank you for the opportunity. Thank you for the recognition of our troops. They are the ones that deserve the credit. So, thank you.

COUNCIL PRESIDENT ANDREWS:

Thank you. Chief Manger?



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**CHIEF MANGER:**

Thank you. I am delighted to accept this proclamation. I want to thank the Council and the Executive for the recognition. I'm delighted to accept it on behalf of the men and women who were on the scene who were actually doing the work, putting themselves in harm's way. I'm so proud every day to work with such great colleagues. The Fire Rescue Service, Maryland State Police, all of the public safety agencies that are in Montgomery County – local, state, and federal – just did a wonderful job. They're great colleagues, and I'm so proud to work with them. I do want to specifically thank, for the Police Department, Commander Russ Hamill, Commander Darrel McSwain, and Lieutenant Nancy Hudson for the work that they did under the director of Assistant Chief Betsy Davis. They did a great job. And like Chief Bowers, the reason that this was a successful operation, the reason that lives were saved, was because of the courage, the dedication of the men and women of public safety in Montgomery County.

**COUNCIL PRESIDENT ANDREWS:**

Thank you, chief. Colonel Sheridan, State Police?

**TERRENCE SHERIDAN:**

Thank you very much, and again, Mr. Leggett, thank you, and the Council, for recognizing this event and all the people that participated that made it so successful. Fortunately, we've got an aviation program in the state of Maryland that prepares for this day in and day out, and we have people like Pilot Jim McKay and Medic Nate Whealock throughout this great state prepared and ready to go 24 hours a day, seven days a week. And we are fortunate that we do train together, we work together, and we collaborate, and we have successes because of that. We cannot operate in a vacuum in these events, or in any event that affects public safety, and I want to thank, again, Montgomery County for recognizing this event and giving those people an opportunity to be known to all of us as to the job they did and the lives they saved, because this could have been a tragedy had not the people responded as they did and get those people out of that terrible water that could have cost them their lives. So thank you, again, very much, gentlemen.

**COUNCIL PRESIDENT ANDREWS:**

Thank you. Thank you, Colonel Sheridan. Chief Zoldos? Fairfax County?

**CHIEF ZOLDOS:**

I did check and make sure the signature was still there. Thank you. On behalf of Fire Chief Ronald Mastin, thank you very much for having us, and we're very proud to be able to demonstrate once again the seamless service that the Council of Governments has come to typify throughout the region, and very proud that we've been able to help a neighbor once again.





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COUNCIL PRESIDENT ANDREWS:

Thank you.

CHIEF ZOLDOS:

And we look forward to you guys coming in and joining us.

COUNCIL EXECUTIVE LEGGETT:

Thank you. Thank you.

COUNCIL PRESIDENT ANDREWS:

And Captain Thomas of the Naval Surface Warfare Center.

MARK THOMAS:

Yes, sir. Thank you. I would like to add my thanks to all of you for the recognition. I'm very proud of our fire crew and very proud to be able to share them with Montgomery County. As much as I'd like to take credit for them, unfortunately, I can't. I'm simply a beneficiary of their service, just as all of you all here in the room are today. The commanding officer of the Naval Support Activity North Potomac, Commander Merritt, who I am serving as bodyguard for today...say a few words on behalf of the fire crew and Chief Henley, who has joined us here today. Scott?

COMMANDER MERRITT:

Thanks, Captain. I appreciate you bringing me along, and in this den of wolves, I think we'll be able to get out of here OK. Like you said, Captain, on behalf of the proud public servants as part of Engine 52 and their battalion chief, Mark Henley, that's here with me today, I want to say it's our proud honor to accept this proclamation. As the military installation in the area, we are not only called upon to serve our government abroad, but to be good neighbors in our communities in which we live and work, and Montgomery County certainly surrounds us there at Carderock. We both benefit from a mutual support agreement, and I think that day was just a demonstration of something we do on a day-to-day basis, and we cover each other's backs.

COUNCIL PRESIDENT ANDREWS:

You did it very well.

CAPTAIN MERRITT:

Thanks.



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COUNCIL PRESIDENT ANDREWS:

Thank you. And we thank the U.S. Park Police, as well, who was not able to be here, and we will forward the proclamation to them. And thank you all for a terrific job. Please convey our thanks and gratitude to all of your troops.

RICHARD BOWERS:

We will do.

COUNCIL PRESIDENT ANDREWS:

Thank you very much.

PHOTOGRAPHER:

Could we get one more photo before they go?

COUNCIL PRESIDENT ANDREWS:

Yes. Sure.

PHOTOGRAPHER:

If all the personnel that's here from the various agencies want to join the group picture...

COUNCIL PRESIDENT ANDREWS:

Good morning again. This was a ceremony to honor the public safety agencies that responded, but I do also want to recognize the very fine work that was done by WSSC personnel in responding to the water main break and fixing the road as soon as possible to get it back up and going. I thought WSSC personnel did an excellent job in responding to the event, and we thank them for that. And I know that there were some representatives here from WSSC today. I saw Rudy Chow. Thank you. I was just mentioning the good work done by WSSC in responding to the water main break and getting the road fixed as quickly as possible. So thank you. Please convey our thanks to the workers who responded to the event on December 23 and those who helped ensure that River Road was fixed as soon as possible. Thank you. And we'll see you on the 27th. We're going to be doing a review with WSSC of the water mains in the jurisdiction and what we can do to head off these types of things in the future, so we'll see you on the 27th. Thank you very much for being here today. OK, we're now going to move into general business and announcements, agenda, and calendar changes. Linda Lauer?

LINDA LAUER:

Hi. Two announcements. One is the Council is holding a public hearing on February 3 on the spending affordability guidelines for the FY10 operating budget. Then the other announcement is, the public hearing that was scheduled for this evening is being postponed till Thursday night. It's the public hearing on the limited functional Master Plan



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for the Intercounty Connector, bikeways, and interchanges. It'll be at 7 PM on Thursday the 15th. Thank you.

COUNCIL PRESIDENT ANDREWS:

Thank you very much, Miss Lauer. Receipt of petitions - none. Action – approval of the minutes for November 25 and December 2, 2008.

COUNCILMEMBER KNAPP:

So moved.

COUNCIL VICE PRESIDENT BERLINER:

Second.

COUNCIL PRESIDENT ANDREWS:

Second. All those in favor? That is unanimous among those present – Councilmember Elrich, Councilmember Trachtenberg, Councilmember Floreen, myself, Councilmember Berliner, and Councilmember Knapp. And then approval of a closed session minutes – do I hear a motion for December 2?

COUNCILMEMBER KNAPP:

So moved.

COUNCIL PRESIDENT ANDREWS:

So moved by Councilmember Knapp. Seconded by Council Vice President Berliner. All those in favor of the approval of the closed session minutes of December 2, please raise your hand. That is unanimous again. Councilmember Elrich, Councilmember Trachtenberg, Councilmember Floreen, myself, Council Vice President Berliner, and Councilmember Knapp. Thank you. Consent Calendar.

COUNCILMEMBER FLOREEN:

Move approval.

COUNCIL PRESIDENT ANDREWS:

Move approval. All right. Councilmember Floreen has moved approval. Is there a second?

COUNCIL VICE PRESIDENT BERLINER:

Second.

COUNCIL PRESIDENT ANDREWS:

Second by Council Vice President Berliner. Any comments on the Consent Calendar? Councilmember Knapp.



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**COUNCILMEMBER KNAPP:**

We have before us being received and released today an Office of Legislative Oversight Report 2009-7, Organization of Recreation Programs across Department of Parks and Department of Recreation that had been requested by CMD Elrich. I very much appreciate he has requested this and appreciate the work of OLO. The Fed Committee is going to have work session on February 9. But this is an excellent example of the types of things that we as county government need to be looking at during difficult fiscal economic times - are there places where there are redundancies, are there places that we should seek efficiencies, are there places we can just do our job better - and this is a report that identifies a place that's been an area for conversation is over the last 10 to 15 years, and I very much appreciate Mr. Elrich, but I urge us as a body to continue to look and explore for these additional opportunities, because now is the time to do it, so that as the economy gets better in the next few years, we are better positioned to serve our residents more effectively in the future. And so I thank him very much for that and thank OLO for their efforts and look forward to working through on this issue in the coming weeks.

**COUNCIL PRESIDENT ANDREWS:**

Thank you for those comments. I would second them. OLO has again done a very comprehensive and thoughtful report and one that will provide a lot of basis for some good discussion and activity, and I would expect we will see, as is the case with OLO reports generally, real changes resulting from the report, although what they are remains to be determined. Councilmember Elrich.

**COUNCILMEMBER ELRICH:**

I just wanted to say I really appreciated the work that the staff did on this. I think that it is critical that we begin to examine the structure of government here, and at the end of my briefing with the OLO folks, I mentioned that I had a couple of other departments in mind that I think need the same kind of scrutiny and would hopefully lead to the same kind of recommendations. When I first came on this Council, people started, you know -- the word "stovepipe" was routinely tossed around. And at some point, you've got to stop talking about stovepipes as an impediment to being efficient and actually do something about the stovepipes. So I really welcome this report, and I hope that it's the first of several and it leads to a leaner and more efficient administration here.

**COUNCIL PRESIDENT ANDREWS:**

Very good. All right. I don't see any other comments on the Consent Calendar, and so we will vote on it. All those in favor of the Consent Calendar, please raise your hand. That's unanimous. Marc Elrich - among those present, Councilmember Elrich, Councilmember Trachtenberg, Councilmember Floreen, myself, Council Vice President Berliner, and Councilmember Knapp. Thank you. Next - District Council Session. We are going to take action on just the request for oral argument. We are not going to be making a decision



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about the merits of the case. That will be our focus this morning, and we have Francoise Carrier from the Hearing Examiner's Office here to brief us, and our legislative attorney on zoning issues, Jeff Zyontz. Good morning.

FRANCOISE CARRIER:

Good morning.

JEFF ZYONTZ:

This is an opportunity to – for the Council to say yes or no to oral argument, and that's it, as the chairman said. You had one request for oral argument from the applicant that requested oral argument for the purposes of discussing with the Council the compatibility issues, compliance with the Master Plan, compliance with the purpose and standards of the PD 44 Zone, and the public interest served by the proposed project. You also have in your packet a letter in opposition to oral argument, saying that these considerations were thoroughly discussed in the Hearing Examiner's report. This is a discretionary act by the Council, and if you choose to grant oral argument, we'll do that on February 3.

COUNCIL PRESIDENT ANDREWS:

That's right. OK. Council Vice President Berliner, and then Councilmember Floreen.

COUNCIL VICE PRESIDENT BERLINER:

I just wanted to share with my colleagues that, one, I'm generally predisposed to granting oral argument in these kinds of matters and particularly believe it's appropriate where you have a disagreement between the Planning Board and the Hearing Examiner. This is obviously without prejudice to where each of us come down on the merits. But I feel like it always serves us better to hear from the parties directly with respect to the contested issues and to have the benefit of your great advice in that context, and counsel. But I, for one, as a lawyer, believe that we're better served to grant oral argument generally and particularly in matters where you have a disagreement between the Planning Board and the Hearing Examiner. I certainly believe that, were the situation reversed and our neighborhood associations, if you will, were on the other side of this debate, that they would have been asking for oral argument, and I believe that we ought to be even-handed with respect to how we deal with issues of this nature, so I would prefer that we hear oral argument.

COUNCIL PRESIDENT ANDREWS:

Would you like to make a motion?

COUNCIL VICE PRESIDENT BERLINER:

I will so move.



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COUNCIL PRESIDENT ANDREWS:

All right, and I believe we need to--

COUNCILMEMBER FLOREEN:

Second.

COUNCIL PRESIDENT ANDREWS:

All right. Second by Councilmember Floreen. We need to specify the terms of the argument, but before we do, let me first see if Councilmember Elrich, who has his light on, would like to comment on that.

COUNCILMEMBER ELRICH:

I'll support oral argument. I think the other side of this makes a very good argument, but if we do do oral argument, they recommend that the Council see the 3-D model, have access to it, and I think any terms that the neighborhood wishes to include in terms of having the Council consider that evidence ought to be included in any oral argument.

JEFF ZYONTZ:

That is in the record. It's perfectly appropriate for it to come up here. The other aspect of oral argument is that it's standard practice that each side get 20 minutes, with the right to reserve for rebuttal by the proponent of asking for oral argument.

COUNCIL PRESIDENT ANDREWS:

OK. All right. So we should be able to include that, then, in the...

FRANCOISE CARRIER:

Yes. It's easy to bring the model up here, and I think it is a very...it is a piece of evidence that's easy for the Council to see as a whole, and it was specifically requested by the opposition. So we can certainly do that.

COUNCIL PRESIDENT ANDREWS:

OK. Good. OK. Councilmember Floreen.

COUNCILMEMBER FLOREEN:

Thank you. I guess on the issue of what we would ask people to address, it seems that the real issue has to do with compatibility and compliance with Master Plan?

FRANCOISE CARRIER:

Yes, and the largest the Master Plan issue is compatibility.



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COUNCILMEMBER FLOREEN:

So I would suggest that we ask the parties to address those points. Of course, they're pretty inclusive. It is not a narrow point of debate.

JEFF ZYONTZ:

Just those two issues or all four issues?

COUNCIL PRESIDENT ANDREWS:

There are four identified here.

VICE PRESIDENT BERLINER:

There are four identified. Is there any that staff believes are inappropriate for oral argument?

FRANCOISE CARRIER:

No. There's a lot of overlap. The largest Master Plan issue is, in fact, compatibility, and the largest issues with regard to compliance with the zone are Master Plan compliance and compatibility, so...

COUNCILMEMBER FLOREEN:

It's pretty much all-inclusive.

FRANCOISE CARRIER:

Those are wrapped up together. The public interest issue is a very significant one for the applicants here, so the Council may wish to add that as a topic. It was specifically addressed at some length in the request for oral argument.

COUNCILMEMBER FLOREEN:

So you would have us ask them to address all four.

FRANCOISE CARRIER:

That would be my suggestion, yes.

COUNCILMEMBER FLOREEN:

Why not?

COUNCIL PRESIDENT ANDREWS:

Why not? OK. All right. So I think everyone understands the motion is for oral argument to address all four – compatibility, compliance with the Master Plan, compliance with the purposed and standards of the PD44 zone, and the public interest served by the proposed project. We normally allocate 20 minutes to each side and then open it up for the Council.



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So that's the motion. OK? And it's been seconded. All right. Any more discussion? Councilmember Elrich, you had your light on, I think.

COUNCILMEMBER ELRICH:  
Oh.

COUNCIL PRESIDENT ANDREWS:  
All right. All those in favor of the motion, please raise your hand. That is unanimous among those present. That's Councilmember Elrich, Councilmember Trachtenberg, CBM Floreen, myself, Council Vice President Berliner, and Councilmember Knapp. So the motion passes, and we will have oral argument on February 3.

JEFF ZYONTZ:  
February 3. We'll notify people of the time as soon as it's determined.

COUNCIL PRESIDENT ANDREWS:  
Great. All right. All right. Thank you very much. Our next order of business is number 4, which is action on Zoning Text Amendment 8-16, Workforce Housing - Findings. The Fed Committee is recommending approval with amendments. Councilmember Knapp.

COUNCILMEMBER KNAPP:  
Thank you, Mr. President. This bill, the ZTA, and SRA were introduced by Councilmember Floreen. I'll turn it over for some comments in just a second. The committee unanimously recommended, 3-0, approving ZTA 08-16 and SRA 08-04 with amendments which would make workforce housing provisions consistent throughout the code and to reference the current provision for workforce housing. Our recommendation reflects the recommendation of both the Department of Housing and Community Affairs, the Planning Board, and the Civic Federation. It's always nice when all four of us can actually agree with each other. It doesn't happen all the time, but I commend Councilmember Floreen for doing something that brings us all together. It's a great way to start the New Year.

COUNCILMEMBER FLOREEN:  
Every six years.

COUNCILMEMBER KNAPP:  
Once every six years? So...

COUNCIL PRESIDENT ANDREWS:  
The law of averages kicks in now and then. All right. Great.





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COUNCILMEMBER KNAPP:

OK. Mr. Zyontz has actually put together a fairly straightforward packet. Just by way of background, Councilmember Floreen introduced this on the 29th of July this past year, and it would basically ensure that – take out some inconsistencies within the current zoning ordinances and the SRAs. The zoning ordinance currently requires different findings to approve different applications. A development plan must substantially comply with density and building height recommendations of the relevant Master Plan or Sector Plan, and two, a project plan must be consistent with the Master Plan or Sector Plan recommendations. Subdivision regulations currently require a Planning Board to make the finding that the subdivision regulation substantially conforms to the applicable Master Plan or Sector Plan. Under the ZTA and the SRA, the flexibility to exceed the Master Plan or Sector Plan recommended density would be allowed to the extent required to accommodate workforce housing, but no more than 10% above the maximum residential density allowed by the project's zones. The nice thing about what has been proposed is that it would remove any doubt about the application of its provisions to development plans, project plans, and subdivisions. The Planning staff recommended approval of ZTA 08-16 and 08-04 as introduced. The Planning Board recommended approval with some minor modifications, as did the Civic Federation. We have adopted those. What else should I add that I haven't put out there yet?

JEFF ZYONTZ:

That's sufficient.

COUNCILMEMBER KNAPP:

Would that be good?

JEFF ZYONTZ:

Yes.

COUNCILMEMBER KNAPP:

Let me turn to my colleagues, see if there are any questions.

COUNCIL PRESIDENT ANDREWS:

Councilmember Elrich has one – or a comment.

COUNCILMEMBER ELRICH:

I want to – I have a question and a comment. I wanted Jeff to explain why the word "must" - your little elaboration at the end. Why "must" rather than "may"?



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JEFF ZYONTZ:

You are directing the Planning Board to the standards that they apply to project plans, and that is something that is within your authority to do. The implication of the word “must” is already in the ordinance under the existing code section in Section A of the report. So all this is doing is making that requirement consistent for all types of projects within the zoning ordinance.

COUNCILMEMBER ELRICH:

OK. I just want to say, I think this is an imperfect solution to a problem. It makes me uncomfortable, to some extent, because it means that people’s expectations of their Master Plans may not be met. And I know the Council is trying, with the new zones, to actually build those things in there, and so the community has an open and straight, up-front discussion about what the possibilities are, and they know about that, and that’s built into the Master Plan approval process. We’re taking existing Master Plans now and saying we’re applying another standard to it, so what you think you agreed to and what you thought you were buying into it may not be what you’re getting here. And I am troubled by that. I recognize this is an imperfect solution, and I guess I look forward to the...I would say day, but I guess Nancy will probably say year or decade, when all the Master Plans are revised and so that the language in the Master Plans and the communities have had a chance to actually have this discussion and decide what the appropriate height and density should be, including under the maximum build-out with a MPUs and with workforce housing. So I’ll support this, but I’m not happy about having to do it this way rather than having a real community discussion about what’s acceptable and not acceptable.

COUNCIL PRESIDENT ANDREWS:

OK. Councilmember Floreen.

COUNCILMEMBER FLOREEN:

Well, I just wanted to say that this is not a new idea. It’s not a new concept. It’s not a new initiative, regrettably. I wish we had some more ideas, and hopefully we will find some as we work through Master Plans and the zoning code and all our housing affordability issues. But this is really just cleanup. An initiative that we launched several years ago just didn’t change all the implementing tools that we meant for it to change. And it had come to our attention, as you know, that there were a few details to be sorted out, and that’s all this is. It’s not a perfect world, and when we get everyone to agree on everything, that will be an indeed special time. I doubt that any of us will be still breathing at that point.

COUNCIL PRESIDENT ANDREWS:

You’re probably right. And it’s OK to disagree now and then. If everybody agrees on everything, they’re probably some extra people in the room.



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COUNCILMEMBER FLOREEN:

It would be too boring.

COUNCIL PRESIDENT ANDREWS:

It's all right to have good debate. All right. I don't see any other comments on this item, so thank you, Chairman Knapp. This is a roll call vote. Requires five votes. Clerk, please call roll.

Mary Anne Paradise:

Mr. Elrich?

COUNCILMEMBER ELRICH:

Yes.

Mary Anne Paradise:

Ms. Trachtenberg?

COUNCILMEMBER TRACHTENBERG:

Yes.

Mary Anne Paradise:

Ms. Floreen?

COUNCILMEMBER FLOREEN:

Yes.

Mary Anne Paradise:

Mr. Knapp?

COUNCILMEMBER KNAPP:

Yes.

Mary Anne Paradise:

Mr. Berliner?

COUNCIL VICE PRESIDENT BERLINER:

Yes.

Mary Anne Paradise:

Mr. Andrews.



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COUNCIL PRESIDENT ANDREWS:

Yes. That's 6-0. Can we count that as a vote on both of the items - they were treated together – or should we have separate roll call votes?

JEFF ZYONTZ:

You might as well have a separate vote.

COUNCIL PRESIDENT ANDREWS:

All right. Let's do the separate roll call vote. That was item 4. And now we'll have a roll call vote on the Subdivision Regulation Amendment 8-04, Workforce Housing - Findings. Would you please call the roll?

Mary Anne Paradise:

Mr. Elrich?

COUNCILMEMBER ELRICH:

Yes.

Mary Anne Paradise:

Ms. Trachtenberg?

COUNCILMEMBER TRACHTENBERG:

Yes.

Mary Anne Paradise:

Ms. Floreen?

COUNCILMEMBER FLOREEN:

Yes.

Mary Anne Paradise:

Mr. Knapp?

COUNCILMEMBER KNAPP:

Yes.

Mary Anne Paradise:

Mr. Berliner?



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COUNCIL VICE PRESIDENT BERLINER:

Yes.

Mary Anne Paradise:

Mr. Andrews.

COUNCIL PRESIDENT ANDREWS:

Yes. All right, so both Zoning Text Amendment 8-16 and Subdivision Regulation Amendment 8-4 have six votes as recorded, and they are both adopted. Thank you. We are now going to move on to Legislative Session, day number two of the year, and approval of the Legislative Journal of November 25 and December 2 is first on the agenda. Do I hear a motion?

COUNCIL VICE PRESIDENT BERLINER:

So moved.

COUNCIL PRESIDENT ANDREWS:

Moved by Council Vice President Berliner. Second?

COUNCILMEMBER FLOREEN:

Second.

COUNCIL PRESIDENT ANDREWS:

Second by Councilmember Floreen. Any comments? I don't see any. All right. All those in favor of the Legislative Journals of November 25 and December 2, please raise your hand. That is unanimous among those present – Councilmember Elrich, Councilmember Trachtenberg, Councilmember Floreen, myself, Council Vice President Berliner, and Councilmember Knapp. They are adopted 6-0. Introduction of Bills. Bill 1-09, Finance - Spending Disclosure, sponsored by councilmembers Berliner and Andrews. There is public hearing scheduled for February 3 at 1:30 on the measure. I'll turn to Vice President Berliner and see if there's any comments he wants to make, briefly, about the bill.

COUNCIL VICE PRESIDENT BERLINER:

Thank you, Council President. It is a fairly straightforward bill. It was actually – the inspiration for the bill came from our President-elect, who worked in the United States Senate to ensure more transparency in our government, and it is similar to what the state has adopted, and it seems appropriate for Montgomery County to ensure that all of its contracts of \$25,000 or more are available to our citizenry to see and access and understand exactly how we're spending their money. So that's its purpose and intent, and I'm pleased to have the co-sponsorship of the Council President. It seemed to be



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consistent with your major theme, Council President, of good government, and so it felt to be a nice part of your overall effort.

COUNCIL PRESIDENT ANDREWS:

Thank you for taking the initiative on it, and I look forward to the public hearing on the third. And that it is it for introduction of new bills. Yes. Comment by Councilmember Elrich.

COUNCILMEMBER ELRICH:

One, I'd like to be added as a co-sponsor.

COUNCIL PRESIDENT ANDREWS:

Very well. Thank you.

COUNCILMEMBER ELRICH:

I think it's an excellent piece of legislation. And you don't have to do this now, but if somebody would at some point explain to me why 25 and not 10, I'd be more than happy to be illuminated. I am interested in the lowest feasible number that we can get to.

COUNCIL PRESIDENT ANDREWS:

OK. That's a good question, and we can discuss that in detail once we get to the work sessions and look at the rationale for whatever threshold we adopt. Thank you. All right, we are going to move on, then. Without objection, the bill is introduced, and we're going to move on to the call of bills for final reading. These are going to be work sessions today because we have a less than full complement of councilmembers here, and there is no necessity to pass the bills today. And so we will treat this as a work session, and we will come back to vote on them either the 27th or the 3rd - 27th of January or 3rd of February. The first bill is a bill that's sponsored by Councilmember Knapp. It's bill 27-08, Motor Vehicles and Traffic - Parking Regulations, regulating the parking areas that commercial vehicles and recreational vehicles can park. And this has been the subject of two work sessions in the Public Safety Committee. I think we were joined at both those work sessions by Councilmember Knapp, who has been working on this issue for quite a while. And the bill has been before the Council for quite a while. It was introduced last June, had a public hearing in July, we had work sessions September and December, and we made some modifications to the bill reflecting recommendations that we had from the Executive branch, which was also looking at a comprehensive revision of code enforcement, and this was part of what they looked at. And they shared their recommendations with us in the fall to about how they would address this, and the committee appreciated that and made some changes to the bill that benefitted, I think, from their recommendations. And we have Assistant Chief Administrative Officer Tom Street with us. If you'd like to join us at the table, that'd be good, because I probably will not get all the details of the bill right as I go through it. We made a number of changes, and it will help to have you up there since you



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worked on this issue over a long period of time. Why don't you introduce yourself for the cameras?

**TOM STREET:**

Mr. President, Tom Street, Assistant Chief Administrative Officer. With me today is Fred Lees from our Department of Transportation. He's been very involved with the parking issue with the Code Enforcement Workforce.

**COUNCIL PRESIDENT ANDREWS:**

Thank you both for being here. And Bob Drummer, our attorney on this issue, and staff on this issue, did a great job, as usual, and has prepared an excellent packet. Let me -- I'd like to first, if Councilmember Knapp would like to say a few words about this... It very much is his initiative, and I want to give you an opportunity to set the stage.

**COUNCILMEMBER KNAPP:**

Thank you, Mr. President, and Public Safety Committee Chair. I appreciate the efforts of the committee over the last few months, and I also appreciate the efforts of the Code Enforcement Work Group. This has been an issue that is significant in the upcounty but is not limited solely to the upcounty, as I've heard from folks throughout the county once this bill was introduced. What we're seeing in many of our neighborhoods, oftentimes in neighborhoods that happen to have larger streets, or wider streets, is they have become places that people have sought out to park recreational vehicles, boats, trailers for extended periods of time, and interestingly, many commercial vehicles -- tractor trailers, large commercial vehicles -- which creates a real safety hazard in those neighborhoods, both for -- as we saw actually witnessed at our public hearing -- very, very difficult for people coming out of cross streets to actually enter the flow of traffic because they can't see around the vehicles on either side, and it has become a real challenge in many of these neighborhoods. And so, in working with Commander Tom Didone and the Fifth Police District and working with other folks within the county, my staff and I drafted legislation to begin to try to address this issue. At roughly -- on a parallel track, the Executive branch had undertaken their Code Enforcement Work Group, which interestingly, when they concluded, got to a very similar place to where we'd gotten to with our legislation, which I'm -- coming at it from two different angles got to roughly the same point, which I was very pleased with, because this can be a contentious issue, and so I was pleased that we got to roughly the same point. I appreciate the Committee's consideration of all of those perspectives. There have been some issues that I think have been raised, and I think legitimately. Folks within various businesses have said, "Well, wait a minute. What about us? Where do we park our vehicles?" And I will willingly submit that one of the challenges that we have is to make sure that we have adequate commercial parking throughout our county. I know I have been talking with folks. I know the folks in the Executive branch have been speaking with folks. We've talked to people at the state.



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We've talked to private sector folks to see if there are ways to increase parking. One of the things that I think was a good recommendation is – what the committee came forward with was to allow commercial parking in industrial zones, which I think provides 13 miles of street parking. I don't know what that equates to as far as number of vehicles, but it will accommodate at least a few of them. And I've also had ongoing conversations with some folks in the private sector who have either land in which they can proceed to build parking or already have parking areas in which they are exploring opportunities to make those lots available for use, both for residential owners who have boats or trailers or RVs and for commercial folks. And at least the folks I've spoken with so far have lots that are fairly accessible to I-270, which I think would be beneficial. So hopefully, if this bill is to pass, before this bill actually gets implemented, we will have some additional – in addition to the industrial zone parking that we have outlined in the bill, we will have some additional spots available, because I think it's important for us to provide that access to folks. I mean, they have them, and we don't have a lot of parking within our county, and so I think we need to continue to try and work on that. The other thing that I think will come as a result if this bill were to pass is, there are a number of restrictions with our HOAs that have been implemented over a long period of time that limit the residents of those communities to park certain vehicles within their community, which has become an issue. And so it is my hope that in the course having passed this, if we do so, that there will engender a conversation within our HOAs to look at some working with their residents to come up with a more suitable outcome or reasonable outcome as to what can or can't be parked within communities. And so I hope that that will occur as well, because I think that that's something that needs to be looked at again in many places. But it's my hope that from a public safety perspective, that the Council will look favorably upon this bill. I think what's come forward between both the committee's work and those of the Code Enforcement Work Group is a very solid bill that I think addresses the needs of the community from a public safety perspective, and I think with working with other folks to identify parking, we can really get to a reasonable outcome. I have no doubt that there will be some issues that are out there, that we never can fully address everything 100%, but I think what we have on the table now is a reasonable way to proceed, and I thank everyone's efforts for that. I also want to thank Carmen Berrios on my staff for her efforts over the last six months. And interesting, this has been going on so long that the person sitting right in front of Carmen is Josh Bokee who actually worked for me, too, who actually started this issue three years before Carmen did. So we've been at this for a while in my office.

COUNCIL PRESIDENT ANDREWS:  
Full circle.





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COUNCILMEMBER KNAPP:

But everyone has shown back. It's kind of old home week. So I thank everybody for their efforts and thank the committee.

COUNCIL PRESIDENT ANDREWS:

Multi-term effort. OK.

COUNCILMEMBER KNAPP:

That's right.

COUNCIL PRESIDENT ANDREWS:

Well, thank you, and you mentioned, Councilmember Knapp, that the primary motivation for this is public safety, and the Public Safety Committee saw it that way, as well, because of how the views are blocked, severely in some cases, by where trucks and RVs are parked, near corners, blocking the view of drivers who are coming around the corner and may not see a pedestrian until it's too late. And so there is a real public safety issue here, which is why this measure is needed, in my view and the committee's the view. I think what I'm going to – and this is a work session, so it's a great opportunity to get any questions out there, as well. I see Councilmember Floreen has her light on, so I'll call on her, and then I'm going to have Bob Drummer, our Legislative Attorney, walk us through the packet. We'll go through each of the issues and spend as much time as we need to on each one and see if there are any questions that we need to get answers to for when we come back and vote on it in two or three weeks. Councilmember Floreen?

COUNCILMEMBER FLOREEN

Thank you. I appreciate the hard work of the committee. I know this has been a community issue, particularly in Mr. Knapp's district, for some long time, and I know that this is responsive to that. We've certainly seen some – certainly in the public hearings, some rather interesting situations, which I think we have an obligation to address. A couple of things - as I look to the bill, I just raise these issues of concern to me as we look at this. One is, it's - the question of notice to community members about this. Our community is experiencing some pretty rough fiscal times right now, and to the extent to which this has an impact on small business people or large business people of any sort, I think it's incumbent upon us to take that into consideration as we look at the effective date for something like this. The County Executive's helping hand, I guess we'd call it, press conference last month suggested that we look at extending the effective date or delaying the effective date of legislation that has an impact on business by 12 to 18 months, depending upon the situation, and I would recommend that we take that into consideration as we look at the implication for something like this, especially for small businesses, who really have very few options, and this is not the time to ask them to undertake more expensive options. I think that's something to consider. The other part is simply the – and



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I'm interested in the committee's thinking about the timing, also, for on-street parking of recreational vehicles. I'll just raise this now. It's in the memo, but you haven't allowed much time for someone who has a visitor from elsewhere or whatever to sort themselves out as they come to visit, or, you know, if they're unloading a trailer or a boat or whatever it is. So I'd be interested in the committee's rationale for that. But the bigger issue is really the timing on something like this, and certainly the notification to small business people who may be affected. I know that Comcast and other utilities have similar issues. I note WSSC had an issue, as well, about trucks used by its contractors. I don't know if it's in the packet, but I saw an email on the subject – I think it was yesterday. Is that right? So we have WSSC with contractors who might be affected by this. Given our press conference just a few -- well, our recognition event of an hour or so ago, it's something to keep in mind how we make sure that we have public utility service people available to address emergencies. I know we have a similar request from Comcast. So those are the issues that I think we need to chew over a bit as we go through this.

COUNCIL PRESIDENT ANDREWS:

OK. Good. And we will. A couple of just quick thoughts on those, and then we'll go through the packet sequentially. The effective date is a very real issue to think about.

Councilmember Leventhal raised issue that as well, who couldn't be here today because he is recovering from surgery. One possibility, the general recommendation of the County Executive that a number of us agree with, is to look at deferring legislation that has a significant economic impact on business for 12-18 months. The bill was introduced last June, and, for example, if we were to defer the effective date until the end of this year or January 1, that would have been 18 months. That would be 18 months from when the bill was introduced and people were put on notice about it. And that might be one approach.

COUNCILMEMBER FLOREEN:

That's one ????? approach.

COUNCILMEMBER KNAPP:

I would just add, in the course of discussion within the committee, I thought the Police Department actually raised a good point, which was, whenever we do it, to do it at a time that they can get some consistent messaging out and to provide some foundation before they begin to apply it. So they were saying, to begin to apply this in the middle of the summer might not be good, so either do it before summer, give us the spring to lead up to that so we can then begin to enforce it, or kind of wait till after that, but make sure we do it in a time that allows them the ability to do it consistently and uniformly throughout the community and have enough people around so it can begin to take effect. So I think we just need to take that into account, as well.



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COUNCIL PRESIDENT ANDREWS:

Yes, and we benefit a lot from the Police Department's thoughts on this, since they are responsible for enforcement and want it to be very effective and practical and well rolled out. With that, let me turn to Bob Drummer now. And, Bob, let's just go through the issues we identified in the packet, and we'll see if there are questions. If you don't hear anything, just keep going, all right?

BOB DRUMMER:

OK. The current law prohibits parking of commercial vehicles in residential neighborhoods abutting a residence, church, school, hospital, or playground, but not if it's actually abutting a vacant lot or an area that doesn't have one of those. The current law doesn't cover recreational vehicles. They're covered generally by the prohibition on parking any vehicle for more than 24 hours unless it's in front of the owner's either home or business. So RVs can park in front of the owner's home for as long as they want.

COUNCIL PRESIDENT ANDREWS:

Of course, determining who owns it is a whole issue in itself with that approach.

BOB DRUMMER:

Right.

COUNCIL PRESIDENT ANDREWS:

Go ahead.

BOB DRUMMER:

You have to determine the ownership of the vehicle and the property. The bill would create a new definition for heavy commercial vehicle, and it includes some size provisions with regard to capacity of one ton, gross vehicle weight of 10,000 pounds, and a height of 8 feet, and a length – originally the bill was 19. The committee extended to 21 because of the fact that there are personal-use pickup trucks now that are more than 19 feet long. I think the largest one is just short of 21 feet. So this would allow the personal-use pickup truck. I think that's the Ford F-150 SuperCab or something like that. The heavy commercial vehicles, under the bill, would be prohibited from parking anywhere on the street except in a commercial or industrial zone. And obviously that has restrictions, too, unless it's otherwise prohibited, parking in the industrial or commercial zone.

COUNCIL PRESIDENT ANDREWS:

They're restricted to commercial and industrial zones.

BOB DRUMMER:

Right. And then that's the—



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COUNCIL PRESIDENT ANDREWS:

That's the trucks.

BOB DRUMMER:

Right. That was the recommendation of the work group, to go that way.

COUNCIL PRESIDENT ANDREWS:

And the committee went with that, right?

BOB DRUMMER:

And the committee went with that recommendation. Let's me see. We covered the definition, we covered that...

COUNCIL PRESIDENT ANDREWS:

The approach with RVs is different. You might want to talk about that in the same breath.

BOB DRUMMER:

That's right. The recreational vehicles – and this was also on the recommendation of the work group – would be prohibited from parking on the street anywhere, either residential or commercial areas, for more than 18 hours. 18 hours was felt to be sufficient to give an owner time to load or unload the vehicle and - for, you know, a trip or whatever they were doing, but not keep it there overnight.

COUNCIL PRESIDENT ANDREWS:

Right. Otherwise they need to be on the property or in storage places.

BOB DRUMMER:

Right. They can be on the property, or they can be somewhere else. Again, this whole bill only deals with parking on streets, on the public streets, not off street. The work group also made a recommendation to strengthen the current restrictions against parking on a roadway shoulder, which was not in the original bill, and the committee went along with that. The current law is, you can't – it prohibits parking on the shoulder if parking is prohibited, you know, on the street, next to the shoulder. And this bill would make it - prohibit parking generally on the shoulder of the road, in certain areas, between the curb and the property line. Then we talked about the effective date of the bill. The original bill was effective 90 days. The committee extended that to 120 days - again, on the recommendation of the Police Department with regard to giving them time to get the word out and let people understand what happened with the bill, and making the assumption that the bill would be enacted around this time, that would put it somewhere in beginning of the summer to be effective.



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COUNCIL PRESIDENT ANDREWS:  
That's the current recommendation.

BOB DRUMMER:  
That's the current recommendation of the committee.

COUNCIL PRESIDENT ANDREWS:  
We'll certainly consider amendments to that.

BOB DRUMMER:  
Then there was also a suggestion by Councilmember Knapp on behalf of some of the public utility companies, Comcast, for a limited exception for a situation where the company has an employee take home a vehicle that would be large enough to fit our definition of heavy commercial vehicle. In Comcast, I believe it's what they call their bucket trucks. They have to take them home at night so that they can respond, I guess, directly from home rather than having to go to the Comcast lot, pick up the truck. And Comcast requested that. Verizon – Comcast told us that they have approximately 20 employees living in the county on any particular night who may take home a truck that would be that size and may or may not have to park it on the street. Some of them may be able to park it in the driveway. They weren't sure how many actually are on the street. Verizon indicated they had some vehicles of that nature but really couldn't give us any definitive amount of vehicles. Pepco and WGL did not appear to really need that exception, and the committee ultimately decided not to put that exception in there. It's mentioned in the packet, though. The language that would cover them would be an exception from the restrictions on parking heavy commercial vehicles, would allow a heavy commercial vehicle taken home by an employee who's on call for emergency work on behalf of a company providing electric, gas, telephone, or cable television service. The committee did not go with that amendment, so it's not in the bill. Since that time, we also received a letter from WSSC. WSSC has really just started focusing on the bill. I don't believe they were involved early on. And their request was, one, to make sure that their vehicles can park on public streets, and to that end, I will say that the definition in the bill of a heavy commercial vehicle excludes a vehicle owned by the county or any other governmental agency. In my opinion, that would cover WSSC trucks. They also requested, though, that their contractors be allowed to park on the street. They do a lot of their work by contract, and the bill would not permit that. I will say that the current law doesn't permit their contractors' trucks to park on the street abutting a house, church, playground, or whatever, and so, for most residential neighborhoods, their contractors' trucks cannot park overnight. All of the commercial trucks can park while they are working, currently and under the bill. But that would be an extension, to allow their contractors. WSSC asked that we use a couple of definitions that already exist in Article 31, which would include not just WSSC's contractors' trucks, but any public utility contractors' trucks,



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as well. And it wasn't quite clear. The conversations with WSSC haven't progressed to a complete position, to tell you the truth, other than what they asked in the letter was that we give them more time to study the bill. And now I guess they're going to get it.

COUNCIL PRESIDENT ANDREWS:

And they'll have it.

BOB DRUMMER:

So we will have time, and obviously I will contact them and work with them over the next couple of weeks to make sure we get their position in front of you and understand what they're doing, what they want.

COUNCIL PRESIDENT ANDREWS:

OK. All right. That's good. That's good. So the issue of the parking of the contractors' trucks is really the issue for utilities. Right now, that's not allowed, and it's not proposed, that part, to be allowed yet, at least under this bill. Their own vehicles they own would be exempt.

BOB DRUMMER:

Right, right. Nor did I find that kind of exception in Prince George's County or in other surrounding counties for public utility contractors' vehicles to park overnight in residential areas. In fact, in Prince George's County, they have the strictest provision I've seen. There's no parking of any commercial vehicle for more than two hours. I was told that they actually have a problem -- at least some of the contractors have had a problem when they're actually working on a house. If they're more than two hours working on a house, they've gotten ticketed, and there have been complaints to the county.

COUNCIL PRESIDENT ANDREWS:

That's pretty short.

BOB DRUMMER:

Although I don't know that WSSC vehicles have been in that situation. And the final issue was, the committee wanted to raise the actual fine for violating the bill, and we looked at that, and actually the fines are not in the legislation. The Council legislation requires the fines to be put in a Council resolution, which can be done. The current fine is \$50. The committee wanted to raise it to \$75. And that can be done but shouldn't be done in this bill. It can be done by separate resolution. Once the bill is enacted, there would be plenty of time to get that done before the bill comes into effect. That's a resolution that you probably -- I think you saw right at the end of the year it comes up and probably will come up again in the spring.



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COUNCIL PRESIDENT ANDREWS:

Right. So that's a separate process.

BOB DRUMMER:

Which covers all fines, charges, and things like that.

COUNCIL PRESIDENT ANDREWS:

Depending on the effective date, there is plenty of time to address that through resolution.

BOB DRUMMER:

Yes.

COUNCIL PRESIDENT ANDREWS:

OK. Thank you very much. Councilmember Elrich.

COUNCILMEMBER ELRICH:

I guess part of my question was answered by Mike's comments. I had somebody approach me from a homeowners association concerned about how this would affect them with their existing rules, and my understanding was, they stay with their existing rules, and as long as they've solved the problem to their satisfaction, it remains solved. So for those people out there in the homeowners associations, I think it's important for them to know we're not overriding whatever agreements they've come up with. I like the law in the state that it's in now, and I ask –

COUNCIL PRESIDENT ANDREWS:

The bill.

COUNCILMEMBER ELRICH:

The bill, yes, in the state that it's in now. I asked some questions about the utility access, and it seems like that if Pepco and WGL and others are able to handle this the way they're handling it, then we should be able to apply this to all the utilities. And we're not doing draconian stuff like preventing people from parking trucks on the street when they're working, which seems to me a rather odd thing for anybody to be doing. So I think we've struck the correct balance here. On the timing issue, if it really is a public safety issue, should we prolong the time, or does public safety and the public interest say that we should do this at the earliest feasible date, rather than delaying it? Because we're basically trading one thing off for another interest, and I think a lot of folks have been waiting, as Mike pointed out - what is it, six years? - for something to be done. That's a rather long wait for a resolution to this. And I thought the committee acted wisely in prolonging this to the date we were looking at as it is. I don't feel a great need to go farther than that.



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COUNCIL PRESIDENT ANDREWS:

OK. Right now, the effective date would be about a year after the bill is introduced, and so we're talking probably about a six-month issue here, and we'll probably have more of a discussion on that when we take it up for final passage, and we don't have to resolve that now. Councilmember Floreen, and then if there are any questions that we want to get on the table. Oops, I didn't see your light, Council Vice President. So, go ahead, and I'll come back to you.

COUNCILMEMBER FLOREEN:

Sure. OK. Thank you. I just have a question about, are we clear as to what we're prohibiting in terms of a commercial vehicle? We get lots of complaints from people about vehicles, I'm just wondering if we – I mean, it's sort of a stupid question, I suppose. Do we have a picture book or something that demonstrates what it is this is applying to? There is some conversation in here about the new Ford F-150 SuperCab, which apparently is not subject to these rules, and I am just wondering if we've got some visuals of the things that this applies to and what it doesn't apply to, so we can – when this is all said and done, I suppose, so that we can guide community members through what are at issue.

TOM STREET:

If I may, a couple of comments. First of all, one of the reasons we went to that, you know, longer length was to make it easier for the police officers to not have to make judgments whether a vehicle is engaged in commercial activity or it's a residential-used vehicle. Regardless of size, if it's not engaged in the purpose of a business, it's legal in the subdivision. So these are – it's banning – generally, once you get beyond that kind of size, the heavy commercial vehicle, as we've defined it, it's pretty evident that those are the vehicles engaged in commercial use and those are the ones causing safety problems.

COUNCILMEMBER FLOREEN:

Well, we all know this, I think. But when you say that, we kind of all have a vision in our heads of these really big trucks.

TOM STREET:

Right.

COUNCILMEMBER FLOREEN:

But many community members, I mean, have visions of smaller trucks creating the same kind of community visual disturbance or...you know, concerns that they have. Certainly I've heard them for 20 years. So I would just say that when this work is completed, if we can get some - have available for residents some visual definition as well the written





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definition so people know exactly what you're talking about.

**TOM STREET:**

If the Council passes this legislation, we will have a very strong outreach program to the various communities explaining, you know, what we can do, what we can't do. In addition to that, the Montgomery County Police plans to start issuing warning tickets, saying that as of this date, this will no longer be prohibited, and you will be fined. So there's going to be a lot of public notice and a lot of advance warning before the fines and the penalties actually go into place.

**COUNCILMEMBER FLOREEN:**

Right. OK. Good.

**COUNCIL PRESIDENT ANDREWS:**

That's good. But yeah, I think that it is important for the community to have a good visual image of what we're talking about. RVs, I think people can picture. Some of the 21-foot trucks, 25-foot trucks, people may have a good idea, but they may not, so it would be useful to have some pictures. And, Bob, your packet is very good, but I think it would be helpful to have a one-page chart as well for the final session we have on this the next time that just shows the current law and the change and how it would change, just on a one-page chart, I think, would be useful. Council Vice President Berliner.

**COUNCIL VICE PRESIDENT BERLINER:**

Just a follow-up observation to Councilmember Elrich's point with respect to the effective date. It was why I was uncomfortable with, quite frankly, the County Executive's proposal that across the board we postpone implementation dates, because I feel that we as a body will be making that determination on a case-by-case basis, and we should do so. With respect to the legislation that this Council passed last year on the effective date for Home Energy Star, we made an accommodation to the building industry because we felt, OK, they needed a little more time. It's a bad economic climate. So I feel like it's appropriate to have the conversation, and it's appropriate for us to reserve onto ourselves when we will apply it and when we won't.

**COUNCIL PRESIDENT ANDREWS:**

I agree, and the County Executive's proposal had a caveat, generally, in it. So it will always come down to the judgment of the body here about the balance of interests there in terms of urgency and impact.

**COUNCILMEMBER FLOREEN:**

Kind of my consistent observation in this area.



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COUNCIL PRESIDENT ANDREWS:

OK. Good. All right. Well, with that, I don't see any other lights on. Are there any questions that anybody would like to have researched in the next couple of weeks, or any other comments?

COUNCILMEMBER TRACHTENBERG:

Actually, just a comment, and I wanted to address Mr. Street, who's with us this morning, and I know that the Executive's Work Group had some proposals on this, and there were some differences, and I'm really just asking you to make some commentary on the formulation of the bill as it stands right now through the committee. It sounded, from your remarks, that the differences had been overcome. There was a resignation that if that happened, we'd be able to do adequate outreach, and I just sort of wanted to confirm that with you.

TOM STREET:

Yes. I think generally, the work session with the committee was very positive. I think we took the best from both versions of the bills - the work group's work, as well as Mr. Knapp's and the committee's. The only thing that I think you've been discussing here may come into question is, you know, the length of time to implementation. Given Councilmember Floreen's concern about impact on small businesses, the County Executive's 11-point program, versus the safety issue that's been raised by the councilmember. So it's a judgment. I do believe a minimum of six months should be the delay to allow us to do the outreach in the educational programs to the community. But other than that, I think we're very comfortable with the outcome of the bill as it is right now,

COUNCILMEMBER TRACHTENBERG:

OK. Well, I would tend to think that the recommendation made by Councilmember Knapp about the implementation being done at a strategic time - in other words, during a lull and giving us some opportunity to do exactly what you're describing would be probably the reasonable approach here. I do thank you for your comments, Tom.

COUNCIL PRESIDENT ANDREWS:

OK. Thank you, Councilmember Trachtenberg. One of the issues I would like Bob Drummer to provide - and he may already have this - is a listing of which municipalities would be covered by it or not, because some of our laws apply to some but not to others. It depends on the law, depending on whether they've adopted it. So I didn't know if you'd had a chance to research that, and you don't have to go through it now, but it's something I think we should have in the final packet.



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BOB DRUMMER:

I can look at that, but I think, actually, some of the municipalities, it would apply unless they opt out, and some of them would have to expressly opt in, but they would have an opportunity to do that after we enact the bill.

COUNCIL PRESIDENT ANDREWS:

Sure. I realize that.

BOB DRUMMER:

So you couldn't say where it definitely would apply or where it wouldn't until they make their decisions.

COUNCIL PRESIDENT ANDREWS:

Right, but some municipalities have voted to be covered automatically when we make changes, and so it would be useful to have the list of municipalities that, if they took no other action, would be covered by this action.

BOB DRUMMER:

OK.

COUNCIL PRESIDENT ANDREWS:

OK? All right. Thank you very much. We'll come back in two or three weeks for the vote. Thank you, Chairman Knapp. All right. Our second bill item today - and again, this will be work session as well - is item number 8, which is a work session on Bill 15-08, Building Permit - Notice, sponsored by Council Vice President Berliner. I will give him an opportunity to make some opening comments about it and then turn to the chair of the Fed Committee. In fact, tell you what, usually we go by - let's give the chair the first crack at it, and then we'll come back to you.

COUNCILMEMBER KNAPP:

Thank you, Mr. President. I was going to do just a brief overview and then turn to the sponsor of the bill and then come back and have Mr. Zyontz walk us through the issues. Bill 15-08 was sponsored by Council Vice President Berliner and came out of, as I understand, the Infill Development Task Force and was linked to the bill that the Council passed back in early December, as it related to heights and setbacks. Residents and civic associations currently learn of a building permit only after it's issued and posted on a property. A building permit applicant may be unaware of the norms of the neighborhood before submitting his or her application. Current provisions for building permit applications are not concise, precise, or decisive. This amendment to the building permit application provision of the County Code would require an affidavit from certain applicants for certain building permits in small-lot residential zones to assure notice to abutting and confronting



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property owners. The applicant would also be required to notify the civic and homeowners associations that cover the area of the building permit. In addition, the bill would require certain applicants to request any neighborhood design guidelines established by relevant civic or homeowner associations and would generally amend the provisions of a building permit application. We received public testimony on this, and that was somewhat split. We also received comments from the County Executive. The Executive did not support the bill because the bill would have the unintended consequence of creating expectations that there is a county government process for which input from the person who received the notice is allowed and relevant. Two, county government would have knowledge of the demolition or construction activity referenced in the notice. And three, county government could require the person who provided notice to cease or modify the activity. Those expectations are inconsistent with current law, under which DPS has no role or authority at that stage in the demolition or the construction process, and in fact, DPS has no role or authority until a property owner actually applies for a demolition or building permit. The Fed Committee went through the Executive's comments, and a majority of the committee generally agreed with what the County Executive had provided, and that was 2-1. Councilmember Elrich was opposed to that. And if you go back and then begin to look at the issues as laid out by Mr. Zyontz in the packet, we never actually got past that first issue because the majority of the committee basically agreed that notice of submission of certain building permits shouldn't be required, and so many of the other issues then became moot. So I think it's going to be important for the Council to walk through those to see, because we as a committee didn't get there because the threshold question wasn't answered to allow us to go to the next level. So with that, that's where the committee's recommendation is. I'll turn to the bill's sponsor and then turn to Mr. Zyontz to walk us through the remaining issues. Council Vice President Berliner.

**COUNCIL VICE PRESIDENT BERLINER:**

Thank you. Let me just share with my colleagues, this bill has generated a fair amount of controversy. Always surprises one what bills generate controversy and what bills don't. This one has. If my colleagues could turn into the packet, I do want you to see where this came from. This came from the work of the Infill Development Task Force, and if you look on page 8 and 9 of your packet, where the Agreement in Principle of the Infill Development Task Force is, you will see at the bottom of page 8 "notice provisions." And it sets forth what is expected here, and of course, in the first paragraph, it says, "On the basis of this agreement in principle, all members of the task force have agreed to either support the legislation or not oppose it or take any actions or make statements inconsistent with nonopposition." So this was a fundamental piece of what the task force had said was important and which we had an agreement among all members of the task force to either support or not oppose or not make statements with respect to it. Notwithstanding that agreement, it is clear that this provision has continued to be something that members of the building community, in particular, have expressed grave



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reservations with respect to. So I wanted to share with my colleagues – that's important for folks to know, that this bill continues to have people in the industry very nervous about it and unhappy about it. My commitment to the task force, my commitment to the builders, was that the task force recommendations – and particularly my bottom-line recommendation with respect to building size - that I would hold firm to what our task force agreed to. I would not modify it even if we had the votes to make it stronger in one direction or stronger in another direction, that there was an integrity to that Infill Development Task Force work, and I would honor it as the sponsor of this legislation. And I am doing so with respect to this piece of legislation, notwithstanding the controversy. But in addition, what I would share with my colleagues is the numerous modifications that are proposed, that I believe are reflected in the staff recommendations as well as my own, which greatly limit the scope of this the legislation. As originally introduced, this legislation literally would have required notice for additions of 200 square feet or more. Right? So if somebody is putting on a new kitchen or a new whatever, you were going to notify a neighbor. Well, that really wasn't what neighborhoods were exercised about. They were exercised about the possibility of, quote, McMansions, we which addressed – and, I believe, in a very constructive way - in the legislation passed in early December. My amendments conform the scope of this notice provision to that legislation so that it has nothing to do with additions. It has to do solely with somebody building a very - a large new home. And in that context, or an addition that's great than 50%, which is equivalent to a large new home. So instead of – as the County Executive's concerns had been and the department's concerns had been, that they were going to have all these people that were going to be having notification and raising questions, now it's hundreds, because that's about the pace of what things are in the moment. So, I think we have vastly reduced the possibility of flooding our Department of Permitting Services with inquiries with respect to this. And the goal throughout was to make explicit that this was notice-only, without any legal rights attached to it. What was the objective here? What was the conversation in the Infill Development Task Force? The conversation in the Infill Development Task Force had been that this was, in effect, a best practice - a best practice to encourage conversation early with your neighbors as to what you're doing. Does it demand it? No. Does it require it? No. Does it create an opportunity for it? Yes. So all this legislation does is simply say to a builder, provide notice to the neighbors, provide notice to the neighborhood association, and what it really is seeking to do, and one of the reasons for the notification is, where neighborhood associations come up with guidelines, it would require the builder to obtain those guidelines. All right? So it is a reaching-out to neighbors, it's a reaching-out to neighborhood associations, and by having the notice, you encourage neighborhood associations to create guidelines as to what they'd like to see happen in their neighborhood when there's a tear-down and a new home being built. What qualities are they looking for? Does it require the builder to follow those guidelines? No. But good builders said to us, "We'd rather know, and to the extent to which we can conform our building practices to what the neighborhood is seeking, that's what we'd do." So that was



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its overall objective. Every amendment that's offered here was designed to make this very clean, very limited, and pure notice, pure conversation-starter opportunity. That being said, it's still, even in this limited form, I don't know if the committee's philosophical concerns would change with respect to whether or not we're creating expectations that cannot be met. We tried hard not to, but I understand that point of view and will be urging my colleagues to support this notwithstanding. But I will confess that I believe that this is a debatable point. OK?

COUNCIL PRESIDENT ANDREWS:

Thank you for those good presentations on it. Councilmember Elrich?

COUNCILMEMBER ELRICH:

I'm of the view that Roger's provisions do more good than harm, and that it is important to try to have this discussion early on in the neighborhood, and that it should be fostered - that the possibility of having a house in a way that is compatible for the neighborhood is more likely occur if there is an opportunity and a reason to have this discussion earlier. These things come about as a matter of surprise no matter how reasonable, perhaps, the addition or the proposal may be. It may wind up being opposed simply because it's a surprise and simply because there's a feeling that the people are doing it didn't feel they had any need to talk to anybody else in the community, which why I think Roger correctly identifies this as a best practice. I think this is pretty innocuous, not going to cost anybody anything other than the printing of these notices. It doesn't give anybody any power to become an impediment to something that we've already agreed we're going to allow people to do. So I think this is worth supporting. I think the world will go on, and we'll all survive this.

COUNCIL PRESIDENT ANDREWS:

Thank you. Council Vice President Berliner had additional comment he wanted to make, and then I will turn to Councilmember Trachtenberg.

COUNCIL VICE PRESIDENT BERLINER:

I failed to mention - and I appreciate my staff pointing out - I failed to mention one other amendment that I included and is also in your packet which builds on the amendment that our colleague, Councilmember Ervin, urged us to adopt, and we did adopt in the context of the larger ZTA on buildings, which was to require a report back from DPS in a year as to the effect of the language. From my perspective, I didn't quite get it, really, in the context of the ZTA, but I think it's more important here, so I will be proposing an amendment here that says, OK, let's try this for a year, and if at the end of that year we hear from DPS saying this has been a nightmare, we can reassess. I don't believe that'll be the case, but I think it's important for us to monitor it and for us to understand what impact it has had, whether it has created false expectations, and to hear back from the department as to



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what kind of comments they've been getting. So I just wanted to make sure that my colleagues appreciated that that, too, will be part of the package of amendments that we will be taking up when this bill comes before us.

COUNCIL PRESIDENT ANDREWS:

Good. Councilmember Trachtenberg.

COUNCILMEMBER TRACHTENBERG:

Thank you, President Andrews. Actually, my question or request is specifically to the Council Vice President, and I did not have the benefit of sitting in on the Fed Committee discussions, although my staff were in attendance, and I wonder if you could provide a little definition around the process that recently was enacted in the town of Chevy Chase specific to building notice and how successful that had been, because I've heard as much from people in the community, and I wondered if you could comment a little bit about that. Because I think that's germane, clearly, to what we're...

COUNCIL VICE PRESIDENT BERLINER:

It is, and my understanding, quite frankly, of their process is that it's far more legalistic, if you will. There is a public hearing with respect to it, or a hearing. There is a process, if you will. So it's stricter than what I am proposing.

COUNCILMEMBER TRACHTENBERG:

That was what I gathered.

COUNCIL VICE PRESIDENT BERLINER:

It is much stricter, or has, if you will, more consequences that what is being provided here, which is, again, simply notification to the neighbors that would then allow the neighbors to pick up the phone, call the builder, and say, "Hey, thank you for the notice. Can we talk about this?" The builder then gets the option of saying yes or no, but that's all this bill does, as opposed to -- and, Jeff, maybe you have -- my memory is a little bit weak with respect to the specifics in the town of Chevy Chase, but I did recall that it was, I believe -- at least one member of the building community has shared with me that it was a lot tougher than what this is.

JEFF ZYONTZ:

I'm not exactly sure on all of their provisions and legislation. I have been in contact with the attorney for the town of Chevy Chase, who indicates that he thinks their process of prior notification of building permit has worked out even though they have the same kinds of limitations that we do. That is, they still have to grant the permit if it's a legal request, ultimately. But they think the conversation has been helpful.



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COUNCILMEMBER TRACHTENBERG:

Could we have a little detail as we prepare for the vote on that?

JEFF ZYONTZ:

OK.

COUNCILMEMBER TRACHTENBERG:

Just because it has been raised with me by folks down in that part of District One, and I just wanted to be very clear about what the differences were. But they seem to have been able to move forward with the reform of that process, based on what people have said to me.

COUNCIL PRESIDENT ANDREWS:

Councilmember Floreen.

COUNCILMEMBER FLOREEN:

Well, on that point, it would be helpful to understand what their system is and how it fits in with the town's permit review process, to the extent there is one. I don't know. Does the town's approve the building permits?

COUNCIL PRESIDENT ANDREWS:

Yeah.

COUNCILMEMBER FLOREEN:

Yeah? Because most communities, they have a set committee of some sort that has a review function of some nature, and how that fits in - the challenge when you're not dealing with an incorporated environment is you're not dealing with folks who have been skilled or have a resource to legal advice or even procedural advice, and understanding the opportunities for discussion is more fluid than in some sort of structured municipal environment. Certainly that's something I did for years in Garrett Park. They had their own process that fed into the ultimate--

JEFF ZYONTZ:

They have their own process, and to some extent, they have their own standards, so they're trying to apply their own standards to their permitting.

COUNCILMEMBER FLOREEN:

Indeed. Yeah, yeah.

COUNCIL PRESIDENT ANDREWS:

All right. Well, I want to say I very much agree with Council Vice President Berliner's decision to tailor the applicability of the provision to the McMansion issue, basically to





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situations where you're talking about a large addition, a very large addition to the home or a rebuild, because I think that's where the issue really is, and that's what the ZTA addressed, as well. So, I think that's the right approach on this, as well, and I think it will be helpful, at least in most cases, I believe, to facilitating a better outcome, and I support it for that reason. As I said at the beginning of the session, this is a work session. We're going to come back to this in two or three weeks. We have a couple of questions to research, and we will have a full complement, I think, of councilmembers then.

JEFF ZYONTZ:

Do you want me to go through issues now or not?

COUNCIL PRESIDENT ANDREWS:

Well, I don't know that... I'll think we'll hold off. I think we hit the major ones, and you'll have to go through them again anyway.

JEFF ZYONTZ:

Right. I did have one timing error. On page 3 of my memo, I referenced 20,000 square feet. That was the recommendation of the Fed Committee on 08-11. It's now 25,000. Mr. Berliner's amendments would make it absolutely consistent with the definition of 08-11.

COUNCIL PRESIDENT ANDREWS:

All right. Well, thank you. So you'll get a chance at the next one. OK? All right. Thanks, everybody. We are adjourned till 1:30, and we have quite a few speakers for the afternoon, so we really need people back. We also have several public hearings that require action, and then we have Board of Appeals interviews scheduled at 2:30, so we have a full afternoon. I think we have 7 to 10 interviews, counting the interviews for the chair position. So I expect that we'll be here till at least 4:30 or so, maybe 5:00. It depends on how long the hearing goes, and the interviews.

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**TRANSCRIPT**  
**January 13, 2008**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

Council President Phil Andrews

Council Vice President Roger Berliner

Councilmember Marc Elrich

Councilmember Nancy Floreen

Councilmember Duchy Trachtenberg

Councilmember Mike Knapp



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1 COUNCIL PRESIDENT ANDREWS:

2 Good afternoon, everybody. Welcome to the County Council. We are expecting other  
3 Councilmembers shortly, although we are missing 3 members of the Council today. One,  
4 George Leventhal, is recovering from surgery. Don Praisner is ill, and Councilmember  
5 Ervin is in Washington working on an education-related event tied to MCPS, so we are  
6 looking forward to hearing your testimony, and those Councilmembers who are not here  
7 will have the benefit of the recording and any written testimony that you provide. The first  
8 public hearing today is on Bill 35-08--Motor Vehicle and Traffic Miscellaneous Provisions,  
9 Funding for Public Safety Programs. This bill would dedicate any revenue generated from  
10 enforcement of traffic control signal monitoring systems and speed monitoring systems,  
11 create a dedicated revenue source to fund emergency apparatus for the Fire and Rescue  
12 Service, pedestrian safety programs and other public safety programs, and generally  
13 amend the law regarding the use of any revenues generated from enforcement of certain  
14 traffic monitoring systems. Persons wishing to submit additional material for the Council's  
15 consideration should do so before the close of business on Thursday, January 29, 2009.  
16 A Public Safety Committee work session is tentatively scheduled for February 5 and 9:30.  
17 Please call (240) 777-7900 for information to keep up to date on any potential changes, or  
18 you can visit the Council web site, as well. Before beginning your presentation, please  
19 state your name clearly for the record. You'll have up to 3 minutes, although you don't  
20 have to use it all, and please stay up on the panel, if you're part of the panel, until all of the  
21 panelists have spoken because there may be some questions for any member of the  
22 panel afterwards. So, we have 6 speakers on this measure, and I'll just call everybody up--  
23 we have 6 chairs--Joe Beach, representing the County Executive; Marcine Goodloe,  
24 representing Montgomery County Volunteer Fire and Rescue Association; Ervin Mack,  
25 representing the Montgomery County Pedestrian Safety Advisory Committee; Alan  
26 Migdall, speaking as an individual; Steve Morrison, speaking as an individual; and Alyce  
27 Orturzar of the Well Mind Association of Greater Washington--and so welcome,  
28 everybody, and Mr. Beach will be first. Good afternoon.

29  
30 JOE BEACH:

31 Good afternoon. For the record, Joseph Beach, Director of the Office of Management and  
32 Budget. Good afternoon, Council President, members of the Council. As mentioned, I'm  
33 Joseph Beach, Director of O&B, and I'm here to testify on behalf of County Executive Isiah  
34 Leggett in opposition to Council Bill 35-08. The subject legislation would require the  
35 application of the net revenues collected from the issuance of speed camera and photo  
36 red light citations to supplement expenditures in certain public safety programs according  
37 to predetermined percentages specified in the legislation. While the County Executive  
38 generally supports the dedication of these resources to the programs specified in the bill  
39 and believes that revenues collected today have largely been so applied, he objects very  
40 strongly to the bill's seeming requirement that existing revenues be dedicated to new uses  
41 and that the bill specifies the allocation of these revenues to certain programs without first



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1 assessing and weighing the relative needs and merits of these different public safety  
2 programs. As written, Bill 35-08 would require that the existing 10.3 million in net citation  
3 revenue be applied to new fire and rescue apparatus, county and municipal pedestrian  
4 safety programs, and police traffic safety programs. This redirection of existing resources  
5 would increase the county's projected FY10 budgetary gap from 515 million to over 525  
6 million or place existing programs at risk of significant reductions or elimination. Since the  
7 inception of the speed camera program in FY07, county tax-supported expenditures for  
8 public safety and pedestrian safety programs have increased by nearly 165 million and  
9 greatly exceed the estimated 26.6 million in net revenues collected from the automatic  
10 traffic control citation programs during that same time period. This increase in public  
11 safety expenditures would be even greater if we measured this from the inception of the  
12 photo red light program in FY2000. As mentioned previously, the Executive does not  
13 support creating a predetermined and arbitrary allocation of citation revenues. We believe  
14 that establishing a percentage allocation of revenues for specific purposes is not good  
15 public policy, since the resources should be allocated after the needs have been  
16 identified, related costs have been quantified, and there has been an opportunity for other  
17 competing needs to be considered at the same time. For example, according to the  
18 percentage allocation of the subject legislation, 900,000 would be allocated for pedestrian  
19 safety programs in certain municipalities that have those programs but do not have a  
20 police department. However, we think first that we should assess the amount that is  
21 required for municipal pedestrian safety programs on their own merits, how it would be  
22 used, and that the decisions be based on collision data, and we're not sure that the  
23 percentage allocations bill would be the best use of resources for either pedestrian safety  
24 or public safety. In closing, I want to stress that we generally support the identified uses in  
25 the legislation, but those uses should be prospective, applied to new revenues, and that  
26 the existing budget process should be used to determine the allocation for those  
27 resources based on a comprehensive assessment of needs, related cost, measurement  
28 data, and evidence of what works to improve public safety and pedestrian safety. We can  
29 accomplish this by collaboratively working together without new legislative mandates.  
30 Thank you very much for letting me address the Council in this matter.

31  
32 COUNCIL PRESIDENT ANDREWS:

33 Thank you. Our next speaker is Marcine Goodloe, representing the Montgomery County  
34 Volunteer Fire and Rescue Association.

35  
36 MARCINE GOODLOE:

37 Thank you. I am Marcine D. Goodloe, President of the Montgomery County Volunteer Fire  
38 Rescue Association. We thank you for the opportunity to lend the volunteers' support to  
39 this important bill. We do not believe that there is any question s for the value of speed  
40 cameras. Statistics from Australia and Europe, where speed cameras have been in use  
41 for many years, have research and significant data that proves that they reduce speed



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1 and save lives. We applaud Montgomery County for making the wise decision to apply  
2 this needed and valuable lifesaving protection, again, for the safety of our people and  
3 community. On a daily basis, the Montgomery County Fire Rescue Service's personnel,  
4 both volunteer and career, respond to tragic vehicle accidents. Speed oftentimes is a  
5 major factor in vehicle accidents. Any accident that ends in a death or serious injury of a  
6 loved one not only leaves their family and friends grieving at the loss. It also has a marked  
7 effect on fire, rescue, and emergency medical responders, yet they continue to battle to  
8 save lives. The one redeeming feature in this battle to save lives is to ensure that we have  
9 state-of-the-art ambulances and other apparatus to respond to the emergency calls. The  
10 cost of these ambulances and other apparatus runs from \$200,000 to over \$1 million.  
11 Clearly, by allowing the percentage of revenue from the speed camera fines to go to the  
12 Fire and Rescue Service to help to obtain these lifesaving needs is logical and  
13 appropriate. The fire, rescue, and emergency medical volunteers of Montgomery County  
14 support this bill and respectfully urge the Council to approve the needed funding. Thank  
15 you.

16  
17 COUNCIL PRESIDENT ANDREWS:

18 Thank you. Erwin Mack, representing the Montgomery County Pedestrian Safety Advisory  
19 Committee. Good afternoon.

20  
21 ERWIN MACK:

22 Mr. President, Councilmembers, my name is Ervin Mack. I'm the Chair of the Montgomery  
23 County Pedestrian Traffic Safety Advisory Committee. I'm representing the committee's  
24 point of view. I've provided each of you with a copy of the Montgomery County Code,  
25 Article 9, "Pedestrian and Traffic Safety Advisory Committee," which clearly defines what  
26 the committee must be. It specifically states, "The committee must advise the Executive  
27 and Council on priorities and needs, et cetera." The committee has the following  
28 concerns. Pedestrian collisions in Montgomery County have continued to rise and need to  
29 be reduced. Two, dedicated speed camera revenues to fully fund the pedestrian safety  
30 initiative is very important to reduce pedestrian collisions and is what the revenue was  
31 intended to be spent for, per enabling legislation. 3, while the county does not need all the  
32 speed camera revenues to fully fund the pedestrian safety initiative, it certainly does need  
33 more than 26%--that is what the Council has proposed, 75% of the 35%--to pedestrian  
34 safety comes out to. Last September, County Executive Leggett proposed dedicating  
35 approximately 50% of the speed camera revenues to fully fund our pedestrian safety  
36 initiative. That is still the amount that's needed. Council, the bill as proposed essentially  
37 cuts the pedestrian safety funding in half. Four, the County Executive's strategy for our  
38 pedestrian safety initiative is what we spend our money on improving safety where our  
39 pedestrians are being hit. This is based on police accident reports. See the attachment  
40 which I've provided for you. This is how we will obtain data-driven results. Council's Bill  
41 35-8 proposed to divert 9%--that's 25% of the 35% the Council proposed to spending on



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1 pedestrian safety--of speed camera revenues to where only 3 pedestrian collisions have  
2 occurred in the last 5 years, the town of Poolesville. In contrast, under Bill 35-08, we  
3 would spend 26% of the speed camera revenue where the remaining 1,823 pedestrian  
4 collisions have occurred. In other words, Council Bill 35-08 has us spending 9% of our  
5 money where less than 1/1,000 of 1% of the pedestrian collisions have occurred while we  
6 spend only 26% where 99.99 percent of pedestrians are being hit. That is spending nearly  
7 \$1 million a year where there are hardly any pedestrian collisions occurring. In 5 years,  
8 that could be nearly \$5 million that would be diverted to Poolesville to protect pedestrians  
9 where pedestrians are not being hit. This does defy logic as well as sound public policy.  
10 What is driving this provision, Bill 35-08? It certainly is not the data or the facts. We're very  
11 pleased that PREZCO also has similar concerns. The Pedestrian Safety Traffic Advisory  
12 Committee respectfully requests that the Council reconsiders its position so that we might  
13 proceed fully funded with the responsibilities assigned to us. Thank you.

14  
15 COUNCIL PRESIDENT ANDREWS:

16 Thank you. Next speaker is Alan Migdall, speaking as an individual.

17  
18 ALAN MIGDALL:

19 Speaking as an individual, but I am a member of the Pedestrian Traffic Safety Advisory  
20 Committee, which, as we heard, is charged with providing advice to our elected officials  
21 regarding priorities and needs in pedestrian safety and access. Nothing relates more than  
22 this mission than securing adequate funding for pedestrian projects. The urgency of this  
23 task is, unfortunately, seen in the data on pedestrian collisions within the county over the  
24 last few years. You can see the graph, and, unfortunately, the y-axis labeling is  
25 "Pedestrian Collisions Per Month." It's clear that we're on a steadily increasing trend with  
26 no sign of it abating. More disturbing is that the rate appears to be increasing even faster  
27 than the population growth. Given this trend, it's clear that if we have any hope of  
28 changing its direction, we must do things significantly differently than business as usual.  
29 The enforcement provided by the speed camera is one such example of a real change in  
30 how we operate. That program, only in its infancy, will hopefully bear fruit in reducing the  
31 collision and fatality rates, but it can only address part of the problem. Certainly, there  
32 needs to be new funding that provides improvements in infrastructure focused on  
33 pedestrian safety. Again, to really make a significant change in collision rates, that funding  
34 must be at a significant level. That's why we were very happy that the speed camera fines  
35 would be used specifically for public safety purposes, including pedestrian safety  
36 programs, and that those funds are restricted from supplanting existing funding. Given  
37 that 6 years into the county's pedestrian safety initiative, we see no sign of the casualties  
38 even slowing down, we should make certain that we take advantage of this opportunity to  
39 significantly increase our pedestrian safety efforts. The focus should always be on the  
40 sobering trend of deaths and injuries and how to reduce it, and until that trend starts to  
41 drop, we must be sure that these specifically designated funds are focused most directly



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1 on this purpose and focused most efficiently toward that goal. That's why we're concerned  
2 about the bill. We feel that our efforts should be data-driven to be most efficiently directed.  
3 That's how the speed camera locations were selected. There was very careful attention as  
4 to where the greatest danger exists, and conversely, there was concerted effort to avoid  
5 undue influence by politics. We feel that that was a successful way to go, and we would  
6 like to see to it that the safety data, not politics, governs the allocation of these pedestrian  
7 safety funds. For example, how much injury is caused by the lack of emergency  
8 equipment versus inadequate funding of infrastructure? Also, how much of the danger is  
9 in municipalities without police departments versus not? Without answers to such  
10 questions, we likely will not be most efficiently using these funds to reduce pedestrian  
11 deaths and injuries, and even if the numbers existed that support this particular  
12 distribution at this moment in time, it's not likely that it would remain constant, and thus,  
13 the allocation would require continual adjustment at the legislative level. Such a  
14 mechanism is not the best way to deal with this problem. Given these questions, it's best  
15 to avoid specific mandating of program details by legislation of this type. It's best to let the  
16 funds be designated simply for pedestrian safety without supplanting new funds and let  
17 the agencies most closely dealing with it recommend where they should best be spent,  
18 and this should be on everybody's bulletin board. I mean, this graph is what we need to  
19 focus on because the thing we know, next year, we'll have exactly the same or more  
20 unless we do something different.

21  
22 COUNCIL PRESIDENT ANDREWS:

23 Thank you for your testimony, and thank you all for your testimony. The bill, as you have  
24 noticed, includes the first dedicated funding for pedestrian safety as well as for emergency  
25 and fire and rescue apparatus and traffic safety projects within the Police Department. It's  
26 designed to provide the approximate amount of money that's needed to fund the initiatives  
27 that are currently planned in all of those programs, so there's a lot of thought that went  
28 into the overall percentage differentiation there, and the speed cameras that are placed in  
29 municipalities that don't have police departments are placed there by the Police  
30 Department after looking at the traffic data, so there's a tie between where the speed  
31 cameras are placed and a history of concern, at least, by the Police Department about  
32 where speeding is a problem or where pedestrian safety is a problem. I wanted to ask Mr.  
33 Beach if the Executive supports any dedicated funding for speed camera or red light  
34 camera revenues.

35  
36 JOE BEACH:

37 At this point, at least legally, we are not considering any sort of dedications like that. We  
38 think the budget process right now--where the Executive makes recommendations,  
39 Council has an opportunity to review, make final decisions--is a better process rather than  
40 a legislative mandate that would dedicate the revenues, at least not for pedestrian safety,



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1 but we did have the dedicated EMS fee, which would dedicate resources to Fire and  
2 Rescue Services or Emergency Medical Services.

3  
4 COUNCIL PRESIDENT ANDREWS:  
5 I heard about that one...

6  
7 JOE BEACH:  
8 Yeah. Yeah. You seem to recall.

9  
10 COUNCIL PRESIDENT ANDREWS:  
11 But what struck me is, Mr. Mack's testimony noted that the Executive had proposed  
12 allocating a certain percentage from the speed camera revenues-- 50%, in his testimony--  
13 toward pedestrian safety, and I'm not sure exactly how he came to that number, but the  
14 number that we came to for 35% of the speed camera revenues and the red light camera  
15 revenues is enough to fund all the pedestrian safety initiatives that are currently planned,  
16 accounting for what else is being spent, and that would not be supplanted, and so there's  
17 a tremendous commitment on the Council to maintaining our pedestrian safety initiatives  
18 and, as Mr. Migdall noted, making progress on reducing the number of collisions that we  
19 have, pedestrian collisions, and we have hundreds a year. Fortunately, very few are fatal,  
20 but many are very serious, whether they involved pedestrians and--in dozens of cases, at  
21 least--bicycles, as well, so that's why a large focus of this bill is on pedestrian safety, but it  
22 was confusing to me because on the one hand, I heard that the Executive proposed using  
23 half of the funds for one purpose and yet I hear you saying you don't want dedicated  
24 funding.

25  
26 JOE BEACH:  
27 No. Can I explain that? The Executive's recommendations that he made this commitment  
28 last fall was based on the recommendations of--I'm struggling for the name--the  
29 Pedestrian Safety Task Force. They issued their recommendations, I think, a year and a  
30 half ago, and the annual level of funding--I believe, and I'm just going from memory here--  
31 was about \$4.8 million for various programs--high-incident areas, education and outreach,  
32 street lighting, and other efforts. That works out to be about 50% of the net citation  
33 revenues, but his decision was based on the recommendations of the advisory committee.  
34 It wasn't based on a percentage dedication of existing revenues.

35  
36 COUNCIL PRESIDENT ANDREWS:  
37 Where is the money going now that's received from speed camera programs?

38  
39 JOE BEACH:  
40 Speed camera and photo red light camera revenues, both the subject of the legislation,  
41 are budgeted within the Police Department in the General Fund portion of that budget,





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1 and they're deposited there, so they're used broadly for public safety purposes. Since it's  
2 deposited in the General Fund, at least sort of notionally, we believe that they have been  
3 used in the past for different pedestrian safety purposes, though in strict accounting  
4 budgetary terms, they're all within the Police Department budget. Police Department is the  
5 agency that administers the program, that collects those revenues, and so they're  
6 reflected in the General Fund portion of the Police budget.

7  
8 COUNCIL PRESIDENT ANDREWS:

9 The County Council has a special responsibility regarding this program because it's the  
10 County Council that's charged under the law with reporting back to the General Assembly  
11 by the end of this year as to how the program is working and how the revenues are spent,  
12 and in light of that, I sent a memo over last fall. September, I think it was. I got a response  
13 back in October from CAO Tim Firestine as to how the monies are being spent from the  
14 speed camera program, and essentially, it said, "There's not a way to specifically account  
15 for how the money is being spent. It goes into the General Fund. There's more money  
16 being spent on public safety than used to be, and it's greater than the difference than  
17 we've taken in, so this money is not supplanting," but he did not indicate that there was a  
18 way to identify how the money was being spent, and, given that I and the County Council  
19 have to report to the General Assembly about how the funds are being used, that makes  
20 me uncomfortable.

21  
22 JOE BEACH:

23 Well, if I could say, I mean, my reading of the legislation--of course, we could go into this  
24 in more detail-- was, our obligation is to report on the effectiveness of speed camera  
25 revenues. The state may be interested in how the monies were used...

26  
27 COUNCIL PRESIDENT ANDREWS:

28 I can assure you, they are.

29  
30 JOE BEACH:

31 But strictly according to the terms of the legislation, it was the effectiveness of the speed  
32 camera program generally. Now, there's a way of doing it more specifically than we're  
33 now. We could create a special fund for this. Just the problem with that and tracking any  
34 revenue like that is very labor-intensive. It takes a lot more work in terms of just  
35 accounting for the revenues, preparing the financial statements. It's just a lot of overhead  
36 with tracking specifically revenues like that. We definitely can, but it is an added workload.

37  
38 COUNCIL PRESIDENT ANDREWS:

39 I can't believe it would be that difficult. You have a very sophisticated financial system  
40 over there. We already have a dedicated fund which I know the County Executive  
41 championed for the housing initiative fund. It's been tracking 3 areas of expenditures that



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1 are all very related to traffic and pedestrian safety or responding to problems related to  
2 traffic and pedestrian safety, creating clear nexus between the way in which the funds are  
3 raised and the way they're spent, so I just don't buy that it would be difficult to establish a  
4 way to track the use of these funds. In fact, I think it's essential to track these funds  
5 carefully in order to present the speed camera program in the strongest possible light to  
6 the General Assembly. It's an extremely valuable program, and I've been a very strong  
7 advocate of it, as has just about everybody in this room, I think, but it is a program that  
8 we're the first to be authorized to employ, and we're the ones that will be reviewed by the  
9 end of the year, at least, if not sooner as to how it's working and how the funds are being  
10 used if there are net revenues, and there are at this point, how they're being used. So, I'm  
11 very dissatisfied with the position that the funds should continue to go into the General  
12 Fund without a way to specifically account for them. I will now turn to my colleagues, and  
13 we have a couple lights up here. Councilmember Knapp was first, then Councilmember  
14 Elrich, then Councilmember Floreen.

15  
16 COUNCILMEMBER KNAPP:

17 Thank you, Mr. President. I just want to follow up on the question that you were kind of  
18 asking, and I guess I'm intrigued. If it's difficult to track the money within the Police budget  
19 for public safety activities as it relates to speed camera money, how are we gonna track it  
20 for the ambulance fee? We're just gonna take a pot of money and say that is goes in there  
21 and hope that the number that we have in Fire and Rescue was a bigger number than we  
22 had last year? How else are we gonna tell people that we're actually spending it for  
23 additional fire and rescue resources?

24  
25 JOE BEACH:

26 Well, it's, of course, not the way you characterize it, and that way, we would have specific  
27 recommendations in the budget for new programs, apparatus, and staffing that would be  
28 there because of the EMS fee, and so it would be very similar. It would be deposited into  
29 the consolidated fire tax district and would be used for expenditure priorities within that  
30 fund.

31  
32 COUNCILMEMBER KNAPP:

33 Well, but I guess the sec-- You just characterized it in Police as, "We put it in the General  
34 Fund because Police spending is higher today than it was last year. Therefore, it's going  
35 to additional public safety spending."

36  
37 JOE BEACH:

38 No. I think we can relate it to very specific improvements.

39  
40 COUNCILMEMBER KNAPP:

41 I haven't seen that yet.



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1 JOE BEACH:

2 Oh, you haven't? The centralized gang unit. We've added several positions within the  
3 Police Department since the inception of this program.

4  
5 COUNCILMEMBER KNAPP:

6 So, speed camera money is going specifically to fund that?

7  
8 JOE BEACH:

9 Well, in none of our financial systems do we take one revenue and say it's for this  
10 expenditure. People don't do that in their checking account. In your checking account, you  
11 have various sources of revenue that go in there, and you don't say, "My interest when for  
12 this portion of the car payment." You could. Yes. You could do that.

13  
14 COUNCILMEMBER KNAPP:

15 Some people take a portion of their salary and put it into account and say, "This is what  
16 I'm gonna spend for the holidays next year."

17  
18 JOE BEACH:

19 Right, but what I'm saying is, there's various sources within the General Fund, within the  
20 Fire Tax District Fund, and trying to relate one revenue to one expenditure is usually not,  
21 first of all, feasible; second, a good use of time; and it's just very labor-intensive.

22  
23 COUNCILMEMBER KNAPP:

24 Well, I guess I agree with the President that we have a responsibility. I think the  
25 Legislature, in any conversation I've had, is expecting an accounting for how we utilized  
26 those resources, and to say that the number we're spending in Public Safety is higher  
27 today than it was yesterday, therefore we can tell you that we're spending the money for  
28 public safety, I'm not sure anyone is gonna buy very well.

29  
30 JOE BEACH:

31 I think they're gonna be more interested in collision data, reduction in speeds.

32  
33 COUNCILMEMBER KNAPP:

34 I think they'll be very interested in both. They're gonna want to know how the actual  
35 program worked. They'll want to know who we spent the money because when it was  
36 passed, it was pretty clear this money was not just to go into your General Fund to fund  
37 additional programs, and so unless we can tell them, "We got this amount of money to  
38 spend specifically on these types of things," I think they're gonna be very reluctant to  
39 continue to move forward because, you know, then it appears as though the incentive for  
40 us to do this is to make more money for our General Fund, not to fund public safety  
41 programs specifically and which specific programs. So, I think it's gonna be real important



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1 between now and the time we get to our approval of the budget in May to show that we  
2 got a pretty good way to account for this, and one of the good ways to do it is for us to  
3 say, "It's gonna go in these specific areas."

4  
5 JOE BEACH:

6 Well, I just think as a matter of fiscal policy to continue to carve out resources like this for  
7 specific uses is gonna restrict your own flexibility in making recommendations and making  
8 priorities.

9  
10 COUNCILMEMBER KNAPP:

11 And generally, I don't disagree, except that when they passed this legislation, it was part  
12 of the requirement for us using the money in the first place, and so while in a \$4 million  
13 budget, I'm not saying we should carve up everything percent by percent, but on a \$10  
14 million to \$15 million, when that was what the statutory authority required us to do, I think  
15 we might want to think about doing it.

16  
17 JOE BEACH:

18 Well, we had the AG's opinion, and I think the AG's opinion showed it could be very  
19 broadly used.

20  
21 COUNCILMEMBER KNAPP:

22 Well, that's good because apparently, that's what we're doing.

23  
24 COUNCIL PRESIDENT ANDREWS:

25 Councilmember Elrich.

26  
27 COUNCILMEMBER ELRICH:

28 I don't support this legislation, so this is a break in the action here, and I agree with your  
29 analysis. I mean, it seems to me that what I'd be looking for, you know, is a maintenance  
30 of effort. Plus, in regard to Public Safety, I should be able to see that the level of spending  
31 has increased by at least as much as these revenues have or, in the event of shrinking  
32 revenues, that these revenues make it possible to spend more than they would in those  
33 departments than we would've had they not been there. I gather from your memo that you  
34 spend more on public safety than these revenues equal.

35  
36 JOE BEACH:

37 Much more.

38  
39 COUNCILMEMBER ELRICH:

40 So, they're just a fraction of what we spend on public safety...



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1 JOE BEACH:

2 That's correct.

3  
4 COUNCILMEMBER ELRICH:

5 but I think what's different about the housing fund is, we say we're gonna spend \$40  
6 million on housing construction, that's the only \$40 million we're spending on housing  
7 construction. You can see how much with housing construction how many loans we've  
8 made or not made. In this case, this is just part of a pot of money which is mingled, I  
9 assume, with General Fund money, correct, and grant money and whatever else we get to  
10 go pay for these public safety efforts. I think it would be useful to delineate the increases  
11 in spending in Public Safety so we can show the State Legislature that, in fact, we've used  
12 these funds to increase our public safety spending and had they not been there, the  
13 Council either would have had to do this at the expense of something else in the budget or  
14 maintain equal spending in other parts of the budget and not done that, but I agree. I don't  
15 think you can come up with a one-to-one correlation between the receipt of this money  
16 and the expenditure by different purposes in Public Safety. I also have a real problem  
17 using this money, as designated in the bill, to replace equipment because I don't believe  
18 this Council will allow the departments to not have equipment to go out and do their job.  
19 We've been committed to making sure the department has equipment. Sometimes the  
20 equipment has been old, but the departments have had equipment. Are we gonna add  
21 any new equipment, Marcine, with this? Do we not have any ambulances or trucks that  
22 we're supposed to have right now or that aren't on order?

23  
24 MARCINE GOODLOE:

25 Our ambulances are aging, and we will, in the future, have to be replacing them, and it  
26 takes time to replace them, and we are concerned about that, as well.

27  
28 COUNCILMEMBER ELRICH:

29 I agree. I'm an advocate of creating a sinking equipment fund so we have regular funding  
30 for equipment, but your statement right there indicates this isn't gonna add a single piece  
31 of new equipment to the department. It's just gonna replace existing equipment, and so if  
32 the state is looking for us to increase our effort over and above what we're gonna do, this  
33 doesn't increase our effort over and above what we're gonna do. It maintains the level of  
34 effort that we're making now. You got an old ambulance. We run it into the ground. When  
35 you say it can't run anymore, we buy a new piece of equipment. I don't see any net gain.

36  
37 MARCINE GOODLOE:

38 Yeah. I believe in testimony from the Executive side that they have stated that additional  
39 money is needed for apparatus.

40  
41 COUNCILMEMBER ELRICH:



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1 Because we have new stations opening up. I believe that's why you supported the  
2 ambulance fee, why the Executive proposed we get dedicated funds in order to support  
3 the expansion of the fleet. I just have a question for the Public Safety folks--pedestrian  
4 safety folks. Given the analysis-- Has there been an analysis done of what the primary  
5 causes of pedestrian collisions are? In other words, you know, it's one thing to say you  
6 can spend a lot of money on this, and I want to preface it by saying we had this discussion  
7 at COG. COG spent a boatload of money on pedestrian safety and on education, and the  
8 results are diddly-squat. Nothing has changed, so the question is, you know, can you  
9 identify it and then, having identified the cost, can you tell me where I can spend my  
10 money effectively that actually gonna change the behavior? How do I stop people from  
11 crossing mid block in dark clothes in the middle of the night and getting hit by cars? What  
12 public safety initiative do I do to prevent that?

13  
14 ALAN MIGDALL:

15 Can I address that? That's a terrific question, and it's hard to get specific data, but as  
16 somebody who lives out there, I can tell you that the collision rate, in significant part, is  
17 because we've always designed our transportation system to get the cars through as fast  
18 as possible, so any time you have a crossing and they specifically put in one of those, you  
19 know, curved entrance ramps, it's designed to get the cars across the crosswalk as fast as  
20 possible. So, you have to make a choice that you're gonna raise the profile of the  
21 importance of pedestrians and say, "Well, the cars are gonna have to slow down because  
22 they're gonna have to go around the ramp," and in my view, that means spending real  
23 money on infrastructure that's specifically focused on pedestrian safety, and we haven't  
24 been doing that, and the data shows that things are even getting worse.

25  
26 COUNCILMEMBER ELRICH:

27 Well, so could you give us examples of, say, an intersection or crossing redesigned that  
28 we could spend the money on if we were gonna spend money that would advance--  
29

30 ALAN MIGDALL:

31 Well, take a look at the 270 entrance ramp from Clopper Road. They just spent money to  
32 make that two lanes to allow much more traffic going across there. A friend of mine is  
33 specifically trying to drum up awareness of this. There's now a flashing light, but the  
34 bottom line is, that needs to be redesigned. In fact, it's totally stupid. You got two lanes  
35 peeling off going into one lane before it enters 270. So, that's clearly a decision made by  
36 somebody saying, "Move traffic as fast as possible."

37  
38 COUNCILMEMBER ELRICH:

39 But you got to admit, it makes it look like the stack of cars trying to get onto the road is  
40 smaller when they can double-lane up going into a single lane than if they have to stand  
41 there as a single lane.



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1 ALAN MIGDALL:

2 So, that's the question, is you're gonna weigh, you know-- My friend came back since she  
3 tried to film it and was nearly killed. I mean, she's an expert on that particular intersection,  
4 nearly killed just trying to get a picture of it.

5  
6 COUNCILMEMBER ELRICH:

7 I guess I would like to see, you know, examples of actual design changes that would  
8 make a difference. I agree with your comment that the main purpose of Montgomery  
9 County County's Department of Transportation historically, or the state department, has  
10 been to move as many vehicles as quickly as possible, and we've had long debates  
11 about, for example, what the timing of a light should be in terms of pedestrian safety, in  
12 terms of people being able to cross the street safely versus what the impact of slowing  
13 down cars and causing longer queues if I biased the light in favor of pedestrians, but fixing  
14 that would've cost zero dollars at all, I'll point out. I mean, to the extent of the safety of  
15 pedestrians has to do with throughput of vehicles and speed, we could fix that just by  
16 changing our light signals to allow more time for people to cross and cross safely. I  
17 noticed the response in Langley Park to pedestrians crossing mid block is the erection of  
18 fences in the middle of the block, and I've also noticed that people now walk on the curb  
19 and have learned how to balance on an 8-inch curb between the fence and the road,  
20 which is very interesting dynamic. I guess I'm interested in what real solutions you can  
21 bring forward to spend the money on because pedestrian safety, on the one hand, is an  
22 enormous concern. I don't want to belittle the concern, but to the extent that the accidents  
23 are caused by people who engage in behavior that's just risky and silly, there's no  
24 government cure for that.

25  
26 ALAN MIGDALL:

27 OK, but I have to address that.

28  
29 COUNCIL PRESIDENT ANDREWS:

30 One thing, we're getting really away from the bill and more into tactics...

31  
32 COUNCILMEMBER ELRICH:

33 I want as much time as you had.

34  
35 COUNCIL PRESIDENT ANDREWS:

36 so it's a good discussion, and it's important, but it's not actually specifically related to the  
37 bill before us in terms of the allocation of money. It's more tactical issue of how you spend  
38 it, what pedestrian strategies work, but I want to hear the ideas, and so I would encourage  
39 Mr. Migdall, anybody else, to be specific, put them in writing for us. I know the Council is  
40 interested, but we do have another public hearing that's got a lot of speakers, so I want to



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1 just note that. That really is about a tactical issue here on how the money would be spent  
2 within it. That's a good question. Councilmember Trachtenberg.

3  
4 COUNCILMEMBER TRACHTENBERG:

5 Thank you, President Andrews. Just one question and then a general comment. Ervin, in  
6 your testimony, you talked about a 50% distribution for the pedestrian safety initiative, and  
7 I wonder if you could talk about that number because you're indicating that that is gonna  
8 be reduced and that number still needs to be funded. So, I'd like you to talk a little bit  
9 about that.

10  
11 ERVIN MACK:

12 I'm a little bit embarrassed by saying we've only had one meeting of the new committee,  
13 and some of the data we have has been given to us by responsible staff, and I'm less  
14 likely to be intelligent about this than I want to be the next time I meet with you, but I took  
15 it for its face value in saying we need all the funds that the Council will give us to do the  
16 job that the Council is expecting us to do, which is kind of going around the end of your  
17 question, so--

18  
19 COUNCILMEMBER TRACHTENBERG:

20 Here's what I would ask because, again, this is actually a question that's been raised by  
21 several colleagues, including Councilmember Floreen, who had to leave us for a few  
22 moments. I think it'd be very useful if we could have some feedback about this because  
23 we've heard different percentages bandied about by different people in different advocacy  
24 groups, and I think it's really fair to say that there's a level of confusion about where that  
25 50% number comes from. So, I wonder if, before we have another discussion on this  
26 before committee or this full body, that we could get something certainly back from the  
27 group that you said. I think that would be helpful.

28  
29 ERVIN MACK:

30 That'll be on our agenda. We meet again February 5 and get information--if not then,  
31 before then--for you.

32  
33 COUNCIL PRESIDENT ANDREWS:

34 Yeah, the sooner, the better, please.

35  
36 ERVIN MACK:

37 Oh, yes.

38  
39 COUNCIL PRESIDENT ANDREWS:

40 Thank you for your commitment on it.





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1 COUNCILMEMBER TRACHTENBERG:

2 That sounds good, and I just have a general comment about---

3  
4 ERVIN MACK:

5 May I comment on something Mr. Elrich said before about the fence, that median fence? I  
6 don't care what you do to protect pedestrians. If they're stupid, if they're drunk, if they're  
7 on drugs, you can't help them. There's a limit to what we can do for pedestrian safety. We  
8 ought to do all we can, and if you erect barriers that are 10 feet high, some fool is gonna  
9 try and scale it. It's just that awfully, awfully basic. So, we've done the best we can in that  
10 particular area of Montgomery County, and that's \$7 million investment-- think of it--for  
11 people who enjoy balancing on a 45-degree slope.

12  
13 COUNCILMEMBER TRACHTENBERG:

14 OK. Thank you. Just a general set of remarks, again, around the dedication of funds and  
15 whether that's a good thing. You know, when I first heard about the legislation and I opted  
16 to put my name on it as a cosponsor, you know, I didn't really view the bill as an  
17 alternative to the ambulance fee. That's not why I was compelled to put my name on it. I  
18 actually saw it more as a fiscal tool that could be employed in a difficult fiscal time, and it's  
19 my understanding that this is a practice which has continued to increase in popularity in  
20 jurisdictions. It's not that unusual, and it would seem to me that while by doing this, we are  
21 focusing, perhaps, in a more narrow way, at the same time, we're actually employing  
22 something that speaks to some discipline, and I, you know, very much believe that, given  
23 where we are around state and county dollars, having a clear idea of how we meet certain  
24 goals and even obligations that are set forth by the state is not an appropriate way for us  
25 to be doing our fiscal planning. So, it's precisely for that reason--again, as the chair of the  
26 Fiscal Committee--that I actually put my name on the bill, so I just want to speak very  
27 publicly about why I did it and the fact that I continue to support it.

28  
29 COUNCIL PRESIDENT ANDREWS:

30 Thank you, and I'm gonna exercise chair's prerogative and just make one last comment,  
31 and then we will go on to the next public hearing. My colleague, my good friend on the  
32 Public Safety Committee made the argument that, well, if you're buying replacement  
33 apparatus, you're just replacing what's already there. Well, if you're buying new apparatus,  
34 first of all, you should assume the existing apparatus is being put out of duty--it can be a  
35 reserve--and second, the new technology that's normally available, new apparatus, often  
36 offers more capabilities to the responders than the existing apparatus does, so in many  
37 cases, you're supplementing the ability of the local department or the fire service to  
38 perform effectively on behalf of our citizens. With that, I'm gonna end public hearing.  
39 Thank you very much for your testimony. We do look forward to hearing from you at the  
40 earliest convenience on ideas for effective use of pedestrian safety spending. Thank you,  
41 and we'll move on to the next--



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1 UNKNOWN SPEAKER:

2 There she is.

3  
4 COUNCIL PRESIDENT ANDREWS:

5 An amendment to the Master Plan for Historic Preservation--Wild Acres, and we have a  
6 number of speakers here for that public hearing, and I am about to find the summary of  
7 what I am supposed to say at the beginning of it. Let me just say, this is a public hearing  
8 on the Master Plan for Historic Preservation for Wild Acres--and here it is-- also known as  
9 Grosvenor Estate. Persons wishing to submit additional comments should do so by the  
10 close of business on Thursday, January 29, 2009. A Planning, Housing, and Economic  
11 Development Committee work session is tentatively scheduled for Monday, February 2,  
12 2009, at 3:00. Please call (240) 777-7900 for information. We have 10 speakers for this  
13 item. Group "A" consists of 5 people, and please all come up. You'll each have 3 minutes,  
14 up to 3 minutes to speak, and please stay at the dais. There may be questions for the  
15 panel. First speaker will be Royce Hanson, representing Montgomery County Planning  
16 Board; Caroline Alderson, representing Montgomery County Historic Preservation  
17 Commission; Michael Goergen, representing the Society of American Foresters; Robert  
18 Day, representing the Renewable Natural Resources Foundation; and Wayne Goldstein,  
19 representing Montgomery Preservation, Inc., and I see Mr. Hanson is here. Go ahead and  
20 begin, Mr. Hanson.

21  
22 ROYCE HANSON:

23 Thank you, Mr. President. For the record, I'm Royce Hanson, Chairman of the  
24 Montgomery County Planning Board. I'm pleased to appear today to present the Planning  
25 Board's recommendations on the amendment to the Master Plan for Historic Preservation  
26 for Wild Acres. The Board evaluated this resource with a public hearing on May 29, 2008,  
27 and work session on July 31st that year. Based on this review, the Board recommends  
28 that Wild Acres be designated on the Master Plan for Historic Preservation. Wild Acres is  
29 truly an outstanding property, and recent research on country estates shows how  
30 significant this property is in Montgomery County. The Board recognizes that the  
31 protection of the resource depends on the property owner being able to have an  
32 economically viable operation, and therefore, the Board recommended an environmental  
33 setting of 5 acres. This is a compromise. The nominator and community have asked for a  
34 designation of a larger setting. The owner has stated a preference in the event of  
35 designation of 1.2 acres. The Board found that a 5-acre setting for the mansion and  
36 garage is necessary in order to convey the context of a country estate. A separate setting  
37 around the caretaker's cottage with potential for relocating the cottage subject to Historic  
38 Preservation Commission review would allow the owner to have some flexibility in  
39 redevelopment option. This recommended setting would protect the historic resource,  
40 enable its adaptive use, and still provide for a viable use of the balance of the property



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1 under the current special exception or under a new special exception, should one be  
2 proposed. Thank you for the opportunity to present this testimony.

3  
4 COUNCIL PRESIDENT ANDREWS:

5 Thank you very much. Right on time. Our next speaker is Caroline Alderson, representing  
6 Montgomery County Historic Preservation Commission, and here she is.

7  
8 UNKNOWN SPEAKER:

9 Caroline Alderson has been detained, but we expect her momentarily, so maybe she  
10 could speak later.

11  
12 COUNCIL PRESIDENT ANDREWS:

13 Oh. Sure. We'll go ahead and go on to the next scheduled speaker, then. That's fine.  
14 Michael Goergen of the Society of American Foresters.

15  
16 MICHAEL GOERGEN:

17 Thank you very much. My name is Michael Goergen. I am the Executive Vice President of  
18 the Society of American Foresters. We are the professional society that represents  
19 foresters across the United States. We're dedicated to protecting, preserving, and using  
20 forests for the benefit of all of humanity. I'm also a resident of Montgomery County and  
21 actually live in the Wildwood neighborhood, about a mile from the office, so I have the  
22 pleasure of walking to work on a regular basis. I'm here to today to ask you for 3 things.  
23 Number one is to consider our option for historic preservation. We agree that the property  
24 should be enrolled in historic preservation. We are asking for environmental setting that's  
25 appropriate and reflects the history that we have gone and researched. We hired an  
26 architectural historian, well-renowned. He has worked with us over the last year to  
27 determine the appropriate setting. We've done the analysis. We understand what the  
28 Grosvenors used the property for. We've looked at Montgomery County code 24A. We  
29 understand what the necessary requirements are. We've proposed a setting originally that  
30 was 1.23 acres, and actually due to Chairman Hanson's urging, we expanded our  
31 recommendation to a setting of 1.44 acres to include the original loop road that was part  
32 of the estate, as well. The second thing I would like to ask you for is to not consider the  
33 caretaker's house, and there are a number of reasons for that. Number one, the  
34 caretaker's house is actually outside the period of historical significance that has been  
35 determined by the state. It was built at least a decade before the period of historical  
36 significance. There's no evidence that the Grosvenors had any real use of it. It was only  
37 used for the opportunity to protect that resource. They lived in Washington most of the  
38 time and were there just on the weekends originally. The other piece is that the claim has  
39 been made that it's important to the historical approach to the home. The historical  
40 approach to the home is gone. It was removed when 270 was put in. That is no longer  
41 there. The whole point of the caretaker's house was to guide people along the



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1 entranceway and to provide for an opportunity to greet and bring those people into the  
2 property. You don't come in that way anymore. It's not appropriate to include the  
3 caretaker's house. As I said, it's outside the period of historical significance. The other  
4 thing I'd like to talk about briefly is this idea of a compromise. I'm not necessarily  
5 convinced that what we should do is sort of compromise around something that we've  
6 done the historical research to understand. If you look at the staff report, they actually  
7 tried to include-- They justify the 5-acre setting by talking about "a concern of significant  
8 and specimen trees and a champion tree." That's not part of the consideration for historic  
9 preservation. It's not part, and if you look at our testimony from Mr. Lebovich, he says,  
10 "Should not include buffer zones or acreage not contributing to the significance of the  
11 property." It's outside the scope. Finally, the third thing I would like to remind you of is, this  
12 is our members' primary asset. We invested in this property in the seventies. We have  
13 cared for it for 35 years. The existing Master Plan actually keeps the resource in place.  
14 We've done everything we can to maintain this property as best we can as a nonprofit  
15 agency that struggles and is going to struggle more in the next few years, as well. It cost  
16 us as much to maintain this building as it would be to rent equivalent office space  
17 somewhere else, and we're doing it because we believe in the setting. We believe in the  
18 property. We're committed to conservation, but these kinds of decisions and impositions  
19 on our property make it very difficult for us for the future. I thank you for your  
20 consideration. I am just asking for those 3 things.

21  
22 COUNCIL PRESIDENT ANDREWS:

23 Thank you very much, and we have your written testimony, as well, so thank you for the  
24 packet. All right. The next speaker is Robert Day of the Renewable Natural Resources  
25 Foundation. Good afternoon.

26  
27 ROBERT DAY:

28 Good afternoon, Council President Andrews--oh, right--and members of the Montgomery  
29 County Council. My name is Robert Day. I am the Executive Director of the Renewable  
30 Natural Resources Foundation. We are a consortium of professional, scientific, and  
31 educational organizations, national in scope, that have come together to advocate public  
32 policies that promote the sustainability of renewable natural resources, and we believe in  
33 using science in that advocacy. RNRF was established in 1972 in the District of Columbia,  
34 purchased the Grosvenor property in 1973, and located to the property after the  
35 Grosvenor Mansion and garage were extensively renovated for use as offices. At the time  
36 of the purchase, RNRF sold 12 acres to the Maryland National Capital Park and Planning  
37 Commission at cost for the establishment of Fleming Avenue neighborhood park, which is  
38 there today. RNRF obtained a special exception zoning in 1973 that permitted the  
39 construction of up to 300,000 square feet of offices but only at a F.A.R. of 0.19. Today we  
40 own 9 acres, upon which 186,500 square feet can be built today and nearly 100,000  
41 square feet of offices can be constructed on adjacent property that is owned by the



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1 Society of American Foresters and which has been part of our special exception since  
2 1973. The special exception has been really lost in this whole discussion because we  
3 have an approved use, and as you look through the reports that have been generated, the  
4 approved site plan is really very difficult to find. RNRF owned the property now owned by  
5 the Foresters in 1980 when we specifically requested that the county evaluate whether or  
6 not the Grosvenor Mansion was historic. The requested evaluation was made before we  
7 began any construction, and the County Council determined that the mansion and  
8 property were not historic, but despite that, we have protected the property. For the  
9 reasons set forth by Mr. Goergen of the Foresters, we respectfully request that the  
10 Council limit the historic designation to 1.44 acres and include the mansion and the  
11 garage but without the caretaker's house. This setting is consistent with the historical  
12 association with the Grosvenor family and the architecture of the house and with the  
13 historic preservation criteria. I'll move quickly.

14  
15 COUNCIL PRESIDENT ANDREWS:

16 Actually, I need to cut you off. We do have your written testimony, and we'll read it, and it  
17 looks comprehensive--

18  
19 ROBERT DAY:

20 It is.

21  
22 COUNCIL PRESIDENT ANDREWS:

23 There may be follow-up questions as well. Thank you very much.

24  
25 ROBERT DAY:

26 Thank you.

27  
28 COUNCIL PRESIDENT ANDREWS:

29 Next speaker is Wayne Goldstein and--Are you Caroline? Yes. OK. All right. We'll go to  
30 Caroline Alderson of the Montgomery County Historic Preservation Commission.

31  
32 CAROLINE ALDERSON:

33 Thank you. Am I bridging the distance, or should I lean to the mic?

34  
35 COUNCIL PRESIDENT ANDREWS:

36 You don't need to lean in too far. It's pretty sensitive.

37  
38 CAROLINE ALDERSON:

39 Is that adequate?

40  
41 COUNCIL PRESIDENT ANDREWS:



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1 That's good.

2  
3 CAROLINE ALDERSON:

4 Thanks. Can't hear back. I feel like I've just arrived at Oz, so thank you for accommodating  
5 my schedule difficulties. For the record--ha ha!--I'm Caroline Alderson, a member of the  
6 Historic Preservation Commission, here to day to present the HPC's recommendations on  
7 the designation of Wild Acres to the Montgomery County Master Plan for Historic  
8 Preservation. The HPC held its public hearing and work session on this amendment on  
9 April 23, 2008. The 8 members in attendance carefully considered the nomination and  
10 voted unanimously to recommend in favor of adding Wild Acres to the Master Plan for  
11 Historic Preservation. The HPC found that the resource meets 6 of the 9 criteria for  
12 designation in the preservation ordinance, and it bears mentioning that the resource only  
13 is only required to meet one. In my experience in the Preservation Commission, the  
14 resource is among the finest we've seen. I can say this was a no-brainer both in the  
15 general designation and in the choice of the environmental setting. The resource is  
16 outstanding both for its historical significance and its architectural value. The estate was  
17 the home of Gilbert Grosvenor--you've heard plenty about that--editor of "National  
18 Geographic" magazine who turned it to a household name. Grosvenor engaged architect  
19 Arthur Heaton to design all 3 buildings recommended for designation--the main house, the  
20 carriage house, and the caretaker's cottage. The buildings form a cohesive whole in their  
21 history and design by the same architect. The rural design of the Tudor Revival house and  
22 garage and the rustic design of the craftsman caretaker's cottage were clearly part of  
23 Grosvenor's vision for a country retreat embodied in the name Wild Acres. All 3 buildings  
24 have a very high level of integrity. I'd like to add that the Commission was undivided in its  
25 feeling that a caretaker's cottage has an inextricable role in a property of this nature, that  
26 is, a retreat of an important person. There is a great deal of caretaking involved in  
27 maintaining the property as it has come down to us today, and so we feel it is a very  
28 important part of conveying the history and functionality of this property. The HPC  
29 recommends the environmental setting that includes the northern portion of the 25-acre  
30 parcel owned by the Society of American Foresters. The setting encompasses 16 acres,  
31 including the mansion, garage, caretaker's cottage, as well as important viewsheds  
32 associated with the resources. The house really has two fronts, and it is critical that this  
33 environmental setting include the viewshed to and from both sides of the house. One  
34 looks to the yard facing Grosvenor Lane and includes access to both the carriage house  
35 and the caretaker's cottage. The other looks over the sweeping lawn and wooded acres.  
36 They're equally important to the historic character of this unique resource. The HPC  
37 recommended the setting that includes the entire frontage of the property along  
38 Grosvenor Lane.

39  
40 COUNCIL PRESIDENT ANDREWS:

41 Good. That's it.



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1 CAROLINE ALDERSON:

2 Thank you.

3  
4 COUNCIL PRESIDENT ANDREWS:

5 We've got it. Thank you very much, and Wayne Goldstein, representing Montgomery  
6 Preservation, Inc.

7  
8 WAYNE GOLDSTEIN:

9 Yes. I'm Wayne Goldstein, President of Montgomery Preservation, Inc., MPI. I'm going to  
10 quote excerpts from this letter sent to the Council from the office of the County Executive.  
11 "The estate originally includes in excess of 100 acres of forested land, of which, following  
12 state highway and other acquisitions, approximately 35 acres remain intact, including an  
13 area reserved for legacy open space acquisition and an office development site. The  
14 Historic Preservation Commission and planning staff recommended approval of the  
15 historic designation with a 16.1 acre environmental setting, citing the original sprawling,  
16 heavily forested nature of the estate and contributing architectural resources consisting of  
17 the mansion, the carriage house, and the caretaker's house. The area recommended for  
18 inclusion in the Master Plan for Historic Preservation did not include the grounds proposed  
19 and had already approved by special exception for offices. Following its consideration of  
20 the matter, the Montgomery County Planning Board reduced the recommended  
21 environmental setting for the mansion and the garage to 5 acres and proposed inclusion  
22 of the caretaker's house with a 10-foot perimeter. On behalf of the County Executive and  
23 for the reasons articulated by the Historic Preservation Commission, we urge you to adopt  
24 the recommendation of the Historic Preservation Commission and the Planning Board  
25 staff and protect this rare historic resource." I think it's important for the Council to  
26 consider the expertise of the Historic Preservation Commission to designate the entire 16  
27 acres that's recommended and to trust that they will work fairly and openly with any  
28 current or future owner about redeveloping this site. That has been their track record. I  
29 have heard nothing to the contrary, and I think that it's entirely appropriate and necessary  
30 to trust the Historic Preservation Commission that we'll care for the resource and make  
31 sure that new uses are allowed. Thank you.

32  
33 COUNCIL PRESIDENT ANDREWS:

34 Thank you. Thank you all for your testimony. We have a couple questions or comments,  
35 first Council Vice President Berliner.

36  
37 COUNCIL VICE-PRESIDENT BERLINER:

38 Thank you all for your testimony... because I appreciate it. There's a unanimous view that  
39 this is a site worth protecting. No one appears to contest that. The argument really is  
40 about how much needs to be protected. We have a range of 1.44--is that correct--to 16,  
41 with Planning Board at 5. That's what's before us, and this body is being asked to make



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1 those kinds of determinations. Dr. Hanson, you've heard the... you're aware of the County  
2 Executive's recommendation. You're aware of the Historic Commission's  
3 recommendation. Now I want to go back to your... testimony because there was a  
4 sentence that jumped out at me, and I'm sure you probably can guess which one it is. And  
5 I just want you to elaborate on it a bit because I want to understand the relationship of this  
6 sentence to your charge into our duty with respect to this. And your sentence reads... "The  
7 board recognizes that the protection of the resource depends on property owner being  
8 able to have an economically viable operation, and therefore the board recommends an  
9 environmental setting of 5 acres. This is a compromise." Talk to me about that--how this  
10 body is--should deal with that issue, whether that is properly something that we should be  
11 taking into account. Obviously, you felt it important enough to influence your final decision.  
12

13 ROYCE HANSON:

14 Yes, we did. We think this is an important resource. And in the public hearing that we held  
15 on this matter, we heard everything that you've just heard and in greater detail. When we  
16 went to the work session on it, we had asked if there were a smaller area that could be  
17 viable, because one of the key elements in preserving this kind of resource is having an  
18 adaptive use for it. There has been an adaptive use for it over time, and that needs to  
19 continue if the resource is going to be protected. Um...  
20

21 COUNCIL VICE PRESIDENT BERLINER:

22 Could you stop there for a moment--  
23

24 ROYCE HANSON:

25 Yes.  
26

27 COUNCIL VICE PRESIDENT BERLINER:

28 And talk about "the adaptive use" that it has had in the past and the adaptive use that--  
29

30 ROYCE HANSON:

31 I believe it's been used for some office purposes in the past. And when we had this matter  
32 before us, there was also a pending special exception, which has since been withdrawn,  
33 for a private school on the property. And one element of the special exception would have  
34 been the use of the building either for administrative purposes or for other aspects of the  
35 school. Um... When looking at this and looking at the whole property, I don't think any of  
36 us on the Board would have had any concern that it would be nice to have the whole  
37 property protected. But to do that or to have a larger part of the property protected, you  
38 need somebody to protect it. And in relooking at the issues, the Board believed that the  
39 designation of the 5-acre area indicated by our staff would be sufficient to maintain the  
40 character of the site, provide enough of an environmental setting to keep it in the style of a  
41 country estate, but would still leave enough land for future use under a special exception





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1 that would make it much easier to maintain the property. So, our view on whether to place  
2 something or how to place something on the Master Plan for Historic Resources is that,  
3 first of all, we want to know that it is historic. And we give a great deal of weight to the  
4 recommendations of the Historic Preservation Commission on such matters. But in  
5 placing it on the Master Plan, we feel that it's important to weigh both alternative uses for  
6 the land and other means--or what the viable means are of protecting a resource.

7  
8 COUNCIL VICE PRESIDENT BERLINER:

9 So, from your perspective, if you will, the viewshed... is in this instance not as important as  
10 ensuring that 1--you would, I assume, argue that the 5 acres is sufficient than for the  
11 viewshed, with respect to this property.

12  
13 ROYCE HANSON:

14 Well, it's sufficient under the circumstances.

15  
16 COUNCIL VICE PRESIDENT BERLINER:

17 And the circumstances that are important to you are to create a context in which the  
18 owners of the property can use their property, i.e. develop their property, in a way--in a  
19 more robust way than would be possible if 16 acres were, in fact, uh...

20  
21 ROYCE HANSON:

22 That's likely, yes.

23  
24 COUNCIL VICE PRESIDENT BERLINER:

25 And with the 16 acres--if 16 acres were selected, would that preclude redevelopment of  
26 the property that these gentlemen own?

27  
28 ROYCE HANSON:

29 I have forgotten offhand how many more acres there are. Their total is about--

30  
31 MICHAEL GOERGEN:

32 35.

33  
34 ROYCE HANSON:

35 About 35 acres, I think, some of which has been developed. There's less to develop.  
36 That's what it comes down to--

37  
38 COUNCIL VICE PRESIDENT BERLINER:

39 But--

40  
41 ROYCE HANSON:



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1 Or less to use.

2  
3 COUNCIL VICE PRESIDENT BERLINER:

4 Less to use, but in your judgment, that difference between what can be used--the  
5 difference between, if you will, it's 11 acres, right, between the 5 and the 16, that that 11-  
6 acre difference is critical to ensuring that these gentlemen have the wherewithal to  
7 maintain the property?

8  
9 ROYCE HANSON:

10 I think that's hard to say with any high level of certainty, but it seemed to us more likely  
11 that if the 5- acre area around the resource were preserved as a part of the environs that it  
12 left a higher level of flexibility to a new owner to develop something that would be viable  
13 and would provide strong incentives to protect the house itself. And we also felt, as the  
14 Historic Preservation Commission did, that the caretaker's cottage is an important part of  
15 the overall resource. So, we have left open the option of moving it if that ultimately makes  
16 sense.

17  
18 COUNCIL VICE PRESIDENT BERLINER:

19 Thank you, Dr. Hanson.

20  
21 COUNCIL PRESIDENT ANDREWS:

22 Thank you. Councilmember Elrich.

23  
24 COUNCILMEMBER ELRICH:

25 How do you decide economic viability? Did they open their books for you and did you see  
26 how much money they're making, how much money they're losing? Or did you determine  
27 how much revenue could be generated off of developing--

28  
29 ROYCE HANSON:

30 No.

31  
32 COUNCILMEMBER ELRICH:

33 19 acres versus... So, this is just whatever they say.

34  
35 ROYCE HANSON:

36 No. I think it's a matter of judgment that we made collectively.

37  
38 WAYNE GOLDSTEIN:

39 But it's--

40  
41 ROYCE HANSON:



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1 For me to try to divine what each of my colleagues thought on the matter is beyond me.

2  
3 COUNCILMEMBER ELRICH:

4 I've always respected your divining abilities, so I thought perhaps you could. [Laughter] I  
5 guess having--what is it-- 19 acres left over unprotected seems like a lot of land to be able  
6 to develop.

7  
8 ROYCE HANSON:

9 Not true. No.

10  
11 COUNCILMEMBER ELRICH:

12 No?

13  
14 ROYCE HANSON:

15 No.

16  
17 ROBERT DAY:

18 Can I speak? Thank you. Yes, there's a couple of things that we need to consider. The 5-  
19 acre setting that the Planning Board recommends actually impinges upon the special  
20 exception that's already approved. So, there are buildings that are in that 5-acre footprint  
21 that's already been approved by the Council. Second thing is, 10 acres were--

22  
23 COUNCILMEMBER ELRICH:

24 Existing buildings? Built buildings?

25  
26 MICHAEL GOERGEN:

27 They're not built yet, no. They are not built at this point in time. They are future  
28 development. The other piece that--

29  
30 COUNCILMEMBER ELRICH:

31 Wait, wait. Slow down. Future development of what?

32  
33 MICHAEL GOERGEN:

34 It's been approved by the Council.

35  
36 ROBERT DAY:

37 Part of an approved site plan.

38  
39 COUNCILMEMBER ELRICH:

40 For?



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1 ROBERT DAY:

2 Under our special exception.

3

4 COUNCILMEMBER ELRICH:

5 For your-- for the expansion of your nonprofit.

6

7 ROBERT DAY:

8 That's correct.

9

10 COUNCILMEMBER ELRICH:

11 OK.

12

13 MICHAEL GOERGEN:

14 The second piece is that there was also 10 acres that was put into forest--excuse me--into  
15 Legacy Open Space designation. And so that's another 10 acres that's been removed  
16 from us.

17

18 COUNCIL VICE PRESIDENT BERLINER:

19 I think that leaves 9.

20

21 ROBERT DAY:

22 9.

23

24 COUNCILMEMBER ELRICH:

25 What are you zoned--

26

27 COUNCIL VICE PRESIDENT BERLINER:

28 That's what you have left to develop?

29

30 ROBERT DAY:

31 That's the amount that we can develop without restriction in accordance with our special  
32 exception.

33

34 MICHAEL GOERGEN:

35 Out of 35.

36

37 ROBERT DAY:

38 Out of 35. We had a prospective purchaser that approached us for 35 acres. In rapid  
39 succession, 10 acres went into Legacy Open Space, and then 16 acres was proposed,  
40 and so--and they went away.

41



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1 MICHAEL GOERGEN:

2 It's important to note as well that there are factual errors in the County Executive's letter,  
3 and we'd be happy to correct those if you'd like us to.

4  
5 [Several people speaking at once]

6  
7 COUNCIL PRESIDENT ANDREWS:

8 Certainly. Let us know what they are.

9  
10 COUNCILMEMBER ELRICH:

11 What's the zoning, and what's the use you plan on putting it to?

12  
13 ROBERT DAY:

14 The zoning is a special exception for office space for non-profit organizations.

15  
16 COUNCILMEMBER ELRICH:

17 So you could over this entire thing build whatever office space you want? Is there like a  
18 density of F.A.R.?

19  
20 ROBERT DAY:

21 Right. .19 for a density of, under the approved site plan, of 283,000 square feet.

22  
23 COUNCILMEMBER ELRICH:

24 For just any non-profits. So, you would rent it out or sell it to other non-profits?

25  
26 ROBERT DAY:

27 We are renting it out to other non-profits.

28  
29 COUNCILMEMBER ELRICH:

30 But you would develop you envision not for your own purposes but as an income-  
31 generator for yourselves.

32  
33 ROBERT DAY:

34 We have--we're a consortium, and so we provide office space to our member  
35 organizations and others... but other non-profits.

36  
37 COUNCILMEMBER ELRICH:

38 I guess I'm looking at this undeveloped land. So you're not providing anything to anybody  
39 on stuff that isn't developed. So what do you plan to provide, to whom do you plan on  
40 providing it, and how much do you need to provide in order to meet your economic need  
41 of maintaining the prop-- you know, maintaining the building?



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1 ROBERT DAY:

2 Uh, all of it. We have had discussions with international non-profits located here in the  
3 Washington area that in a single transaction would take 85,000 square feet.

4  
5 COUNCILMEMBER ELRICH:

6 But that's a different question. I mean, how much can you do is different than how much  
7 do you need. The way Royce posed the question was a need to allow you to be able to do  
8 something in order to maintain the viability of what you had right now. Your argument is I  
9 could build 85,000 feet to satisfy a tenant. That has no bearing on how much you need to  
10 maintain the viability of your operation. That goes to how much economic potential there is  
11 that we might impinge upon if we restrict more of the property.

12  
13 ROBERT DAY:

14 But this is an approved use that has been approved by the Montgomery County Council  
15 and the Planning Board and the Board of Appeals that's been in existence for 35 years.

16  
17 MICHAEL GOERGEN:

18 And we're non-profit organizations dedicated to the conservation of natural resources.  
19 There is no limit to the amount of money that we could spend conserving resources  
20 around the world. So, if we could develop this entire site for additional non-profit  
21 organizations, reap the rewards of that revenue, that's money that we put back in to  
22 conservation on the ground. And at this point in time, we're limited by how much we can  
23 do. And if we have more revenue in the future, that's more revenue we're going to be  
24 putting to work on the ground for conservation purposes. You asked the question, "How  
25 much do you need?" There is no limit to how much we need.

26  
27 COUNCILMEMBER ELRICH:

28 But there's how much you need to carry out--to do the other business of the organization. I  
29 thought that the question that Royce imposed was "How much do you need to maintain  
30 the building?" His concern, I thought, was, you know, are you gonna be economically  
31 viable enough to maintain the existing building, not how much money do you need to  
32 spend around--you're looking at a group of people up here whose needs for money to do  
33 things we think we ought to be doing is probably as boundless as yours is. So, that, to me,  
34 is not the question. The question, I thought, was--that I have to weigh, I think, in terms of  
35 historic preservation--is what do you need in order to make your existing resource viable.

36  
37 [Buzzing]

38  
39 MICHAEL GOERGEN:

40 Sir, the viability of our organization depends on our financial health of the future. And the  
41 fact of the matter is that if we aren't able to--this is our members' primary asset. This is



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1 what we have invested in since the 1970s, in this piece of land. It is obviously the most  
2 valuable thing that we own, and so it's gonna be extremely difficult for us to carry on as an  
3 organization in the future if we cannot receive the revenue that we had counted on from  
4 this property for the future. In terms of maintaining the existing office building, I can tell  
5 you that it costs me more to maintain that building than it would to rent office space  
6 somewhere else. The incentive for me is to board up the building and move on to  
7 someplace else. But, you know, in this case, we have been occupying that space for 35  
8 years, and the reason is that we believe that it's an asset and it's something that we want  
9 to maintain.

10  
11 ROYCE HANSON:

12 If I could elaborate just a moment...at least my thinking, as a member of the Planning  
13 Board. As I said, I believe our decision was unanimous...but I can't certify to you that the  
14 other 4 members did it for the same reasons that I did. The, um...our view was that this  
15 property, at the time that we were considering the matter, was being proposed for another  
16 special exception... that the building and land would be conveyed to the new special  
17 exception user. And looking at this, just based on experience at looking at these kinds of  
18 matters, it seemed to me, at least, that, um... providing for the full 16 acres, which I don't  
19 think anybody would disagree would be nice, was going to create a situation in which the  
20 new user would be so constrained in what they would be able to do that operating that  
21 facility and maintaining the house and the carriage house, the garage, would represent a  
22 substantial burden and would not be in the interest of protecting the property. The key  
23 thing here is to protect the resource and protect as much of the environs as it is feasible  
24 and reasonable to do. And that's why I said this was a compromise.

25  
26 CAROLINE ALDERSON:

27 Can I have a point of clarification-- Can I have a point of clarification on the regs just very  
28 quickly?  
29

30 COUNCIL PRESIDENT ANDREWS:

31 All right. Go ahead.  
32

33 CAROLINE ALDERSON:

34 Under our county regulations, the designation process follows criteria that are based on  
35 national standards, merit, integrity, so forth. Those criteria did not include financial  
36 analyses of the viability issues. We have a separate venue for that. That is the permitting  
37 process. So I would only caution that these have not gone through independent review  
38 because our county regulations handle that in a different arena. And to exclude our  
39 concerns, to exclude the possibility if we designate only the smaller area, that excludes all  
40 possibility of preserving the caretaker's house or a part of that 16 acres. The commission  
41 is acutely aware of the sensitive concerns and is always ready to work with the owner to



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1 reach those compromises in the arena of the permitting process, which is established  
2 under our county regulations for that.

3  
4 [Elrich speaking off mic]

5  
6 COUNCILMEMBER FLOREEN:  
7 Turn on your mic.

8  
9 COUNCILMEMBER ELRICH:  
10 If that's the case, if we designated the larger parcel, that doesn't necessarily preclude the  
11 development of the larger parcel.

12  
13 CAROLINE ALDERSON:  
14 That is correct. It does not even preclude demolition. That has been approved, when  
15 necessary, for the viability of a property, particularly rural properties.

16  
17 COUNCILMEMBER ELRICH:  
18 But what it does is give you greater negotiating ability to assure that whatever's done is  
19 sensitive and in context with what's--

20  
21 CAROLINE ALDERSON:  
22 It gives us flexibility to look at many options. And because we do have 19 acres, there are  
23 quite a few options. And we're not convinced at this point that they have all been explored  
24 or that this is the right place to--

25  
26 COUNCILMEMBER ELRICH:  
27 So it would be incorrect to say that this decision would constrain the development of the  
28 16 acres or preclude it, constrain--

29  
30 CAROLINE ALDERSON:  
31 It absolutely does not preclude development.

32  
33 COUNCILMEMBER ELRICH:  
34 Thank you.

35  
36 MICHAEL GOERGEN:  
37 OK, there's another point of clarification to that statement. Briefly?

38  
39 COUNCIL PRESIDENT ANDREWS:  
40 Yes, very briefly.





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1 MICHAEL GOERGEN:

2 The code actually also says "It should not include buffer zones or acreage not directly  
3 contributing to the significance of the property." How are trees part of that? Also, it has to  
4 be within the time of the significance of the property. The caretaker's house was built  
5 before the significant period was recognized. Thank you.

6  
7 COUNCIL PRESIDENT ANDREWS:

8 Council Vice President Berliner, then Councilmember Knapp.

9  
10 COUNCIL VICE PRESIDENT BERLINER:

11 Dr. Hanson, there's been a number of references to the site plan that was previously  
12 approved by you and presumably it was reference to the Council having approved a "site  
13 plan" with respect to development of this property?

14  
15 ROYCE HANSON:

16 I--this was... the special exception was in 1970, as I currently was chairman of the  
17 Planning Board at the time.

18  
19 COUNCIL VICE PRESIDENT BERLINER:

20 You don't remember? You don't remember this?

21  
22 ROYCE HANSON:

23 I have to use the excuse of age. I just don't remember it.

24  
25 COUNCIL VICE PRESIDENT BERLINER:

26 I don't remember yesterday, so it's OK. Let me ask you. The broader question is, should  
27 that have any bearing? Should the fact that there was an approved, if you will, site plan, is  
28 that--there is an approved site plan that allows for the development of this parcel... what  
29 bearing, if any, should that have on us as decisionmakers with respect to this? My  
30 question.

31  
32 ROYCE HANSON:

33 I don't think it's something that you can ignore. I don't know that it has to be dispositive of  
34 the issue. Clearly, some of the area within that approved site plan is within the 5 acres  
35 that we recommended as a part of the environmental setting. So, um...

36  
37 COUNCIL VICE PRESIDENT BERLINER:

38 OK, second question. The property was, I think it's fair to say, it was thought it was gonna  
39 be sold to--I think it was Edson????? International--is that the name?

40  
41 ROYCE HANSON:



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1 Nations Academy.

2  
3 COUNCIL VICE PRESIDENT BERLINER:

4 Nations Academy. And that was what you had thought was going to happen to this  
5 property. That's what people thought might happen to this property.

6  
7 ROYCE HANSON:

8 That's correct.

9  
10 COUNCIL VICE PRESIDENT BERLINER:

11 And that is now not going to happen with this property.

12  
13 ROYCE HANSON:

14 That's my understanding.

15  
16 COUNCIL VICE PRESIDENT BERLINER:

17 If you had not had a specific development proposition in mind as you considered this,  
18 would it have altered how you would have thought about this? So, today, the reality is  
19 that's not what's going forward.

20  
21 ROYCE HANSON:

22 I don't think so, but it's very difficult to speculate about that. At least I don't think that was  
23 the primary concern that I had. It was that there needed to be, uh...an incentive, certainly,  
24 for the current or next property owner to maintain the property and not, as suggested,  
25 board it up.

26  
27 COUNCIL VICE PRESIDENT BERLINER:

28 And Mr. Goldstein, in your perspective, that concern-- obviously, for all of us, the goal with  
29 respect to this property is preserve it, may have it look nice, may have people drive in, see  
30 the property, not have it be boarded up. Why is Dr. Hanson wrong with respect to that  
31 underlying concern that if we are, if you will, burdening a property owner with an obligation  
32 to maintain this building which does not generate cash for them...Right? I mean, this is a...

33  
34 WAYNE GOLDSTEIN:

35 I haven't seen their books yet.

36  
37 COUNCIL VICE PRESIDENT BERLINER:

38 OK, but let's presume for purpose of this conversation-- and I could be wrong. But let's  
39 assume for purposes of this conversation that it's a net negative in terms of their cash  
40 situation. How do you--you do not weigh that at all in terms of when you say what are the



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1 equities here with respect to how we treat this "property owner" and your use of that  
2 property? How does that factor, if at all, in your consideration with respect to this?

3  
4 WAYNE GOLDSTEIN:

5 If this were a designated property and it went to the Historic Preservation Commission,  
6 and the owner said and opened their books and proved that they could not afford to care  
7 for this, then we would have to figure out a way to help them. Couldn't just say we're  
8 gonna burden you in some way and a burden that you can't afford. And given that they  
9 have a lot of land that they tried to sell, and I assume they'll try again in the future, I don't  
10 know if they have plans of their own to ever develop, but I assume that's why they sought  
11 the sale. But if this were a property that they didn't have those opportunities, what I know  
12 of the actions of the Historic Preservation Commission, is that they would seek to help out  
13 financially. And this actually has become community efforts, where the Historic  
14 Preservation Commission, county government, local businesses have all pitched in to help  
15 try to maintain the store, renovate historic resources. A more recent example took place in  
16 the city of Rockville, where there was a designated parsonage that had burned because of  
17 arson. I guess it's been about 10 years ago. And it took a while to work it out, but the  
18 developers of nearby Rockville Town Center pitched in and helped pay for the renovation.  
19 And now it's been restored and can be reused and is now financially viable. So this is, in  
20 fact, part of the law, that that's why there's also a loan fund that's administered by the  
21 Historic Preservation Commission. It becomes a community effort to help a property  
22 owner who really has a burden. But if you have a large historic resource like this, I think  
23 once it's even-- and if their goal is to do something, if maybe they want to stay in it, maybe  
24 they want to sell, so it may be providing enough funds to restore it to the point that a new  
25 owner can come in. There's just a lot of possibilities. I and others have been involved in  
26 various aspects of this over the years. But we always are sympathetic to the financial  
27 concerns, difficulties of owners.

28  
29 COUNCIL PRESIDENT ANDREWS:

30 Thank you. Councilmember Knapp.

31  
32 COUNCILMEMBER KNAPP:

33 The question for staff and others, well, when this comes to the Committee, I'd like to get  
34 Miss Alderson talking about the notion of how financial viability is a part of the permitting  
35 process. I'd like to get a little clarification as to how that comes in and the specific  
36 elements that have been used to assist property owners to address that viability or  
37 decisions that have been made as a result of that financial question being asked.

38  
39 COUNCIL PRESIDENT ANDREWS:

40 Councilmember Elrich.



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1 COUNCILMEMBER ELRICH:

2 Guess I dovetail on Mike's question. I think it would behoove the Historic Preservation  
3 folks to give us examples of where, in fact, they've allowed development, either  
4 redevelopment or new development, to occur in land that's been designated the way we're  
5 talking about.

6  
7 [People talking at once]

8  
9 CAROLINE ALDERSON:

10 When we look at the Forest Fund Property, that's a great example.

11  
12 COUNCILMEMBER ELRICH:

13 OK, good. Thank you.

14  
15 COUNCIL PRESIDENT ANDREWS:

16 OK. All right, that's it for the first panel. Thank you very much. We have one more panel  
17 on this public hearing. It will be Julia Weller, speaking as an individual; Michael Diehl,  
18 speaking for Fleming Park Community Association; Cheryl Leahy, the Wildwood Manor  
19 Citizen's Association; Elke Jordon, speaking as an individual; and Lisa Goenner, speaking  
20 as an individual. Good afternoon.

21  
22 [Woman speaking indistinctly]

23  
24 COUNCIL PRESIDENT ANDREWS:

25 Uh-huh. OK. Are you Miss Weller?

26  
27 JULIA WELLER:

28 I'm Julia Weller, yes.

29  
30 COUNCIL PRESIDENT ANDREWS:

31 OK, and that's...

32  
33 COUNCIL VICE PRESIDENT BERLINER:

34 You want your testimony to make sense. OK. We've got it. We do. Number 6?

35  
36 COUNCIL PRESIDENT ANDREWS:

37 Yes, we have it. Good. OK. All right.

38  
39 COUNCILMEMBER FLOREEN:

40 Thank you.



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1 COUNCIL PRESIDENT ANDREWS:

2 You can go ahead and begin. Thank you.

3  
4 JULIA WELLER:

5 My name is Julia Weller, and I nominated Wild Acres to be included in the Master Plan for  
6 Historic Preservation. So I'll tell you when to flip the charts so you know what to look at.

7 OK, flip. My presentation's going to focus primarily on the issue of environmental setting.

8 Wild Acres is unique in that it retains 3 well-preserved structures from the early part of the  
9 20th century in their original location. To preserve the historical integrity of the property,

10 it's critical that the County Council adopt the 16.1 acres recommendation of the HPC

11 rather than the 5-acre compromise adopted by the Planning Board when Nations

12 Academy special exception was still pending. Next page. Are you with me, or...

13  
14 COUNCIL PRESIDENT ANDREWS:

15 Yes.

16  
17 JULIA WELLER:

18 OK. The third slide now. This aerial photo from 1951 shows the thick screen of trees along  
19 Grosvenor Lane on the horizontal axis along the top and Fleming Avenue along the

20 vertical axis on the left. The trees were largely planted by the Grosvenors along the

21 perimeter to protect their privacy. The 5-acre setting would eliminate this perimeter. The

22 photo also shows the trees obscure both the entrance to the driveway and the gardener's

23 cottage. Next picture. The gardener's cottage was built in 1913 in the Craftsman style, and

24 is a significant contributor to the historical integrity of this resource. Wild Acres is one of

25 the few country estates that still has their secondary buildings intact and in their original

26 location. The 5-acre environmental setting recommended by the Planning Board would

27 protect only 10 feet and require it to be moved, which is not consistent with the historical

28 integrity. Number 5. The caretaker's cottage was designed by Arthur B. Heaton, as you

29 just heard-- the same architect very well known and well respected who designed the

30 house and the garage. This architectural drawing by Mr. Heaton shows the cut-away

31 porch that you saw in the photograph just before. Number 6. This picture shows the

32 original architectural drawing made by Mr. Heaton of the driveway. The angle of the

33 driveway allowed for the house to be set well back from the road to protect his privacy as

34 well as screen the house from the gardener's cottage as befits a country estate. The oddly

35 shaped, 5-acre setting that was proposed by the Planning Board would cut off most of the

36 driveway and a large portion of the area along Grosvenor Lane. Number 7. The historical

37 integrity of a resource depends both on the location of the building, the inner resource,

38 and on the location of buildings in relation to each other. As you can see from this photo,

39 the carriage house was intended as a visual continuum of the manor house. The west end

40 was deliberately foreshortened so that when approached from the driveway, the carriage

41 house would appear to be an extension of the manor house. Next slide. This is the stable



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1 doors shown in this architectural drawing are consistent with a look of a tudor country  
2 estate. And this is what it was intended to be, a country estate, even though in fact it was  
3 a 4-car garage. Last slide. In conclusion, the environmental setting of 16.1 acres proposed  
4 by the HPC, under which none of the buildings would need to be moved, is critical to  
5 retaining the historical integrity of this property of the suburban country estate. Thank you  
6 very much.

7  
8 COUNCIL PRESIDENT ANDREWS:

9 Very good job, good job. In time. Nicely presented. Thank you. Michael Diehl from the  
10 Fleming Park Community Association.

11  
12 MICHAEL DIEHL:

13 Thank you very much. Good afternoon. I appreciate the technical and detailed attention  
14 that the Council members are giving to acreage and economic analyses, but let's not  
15 forget why this is such a special property. I'd like to speak about Gilbert Grosvenor. Gilbert  
16 Grosvenor was born in Constantinople. He married the daughter of Alexander Graham  
17 Bell, and he entertained Charles Lindbergh, William Howard Taft, and others right on Wild  
18 Acres here in Montgomery County. He had 2 great influences on American society. The  
19 first was through "National Geographic". When he was named editor-in-chief in 1903, this  
20 was a scholarly publication with a circulation of about 1,000. By the time he retired in  
21 1954, this had a circulation of over 2 million. What Grosvenor did was pioneer the use of  
22 photojournalism, the power of photographs to make something like geography seem  
23 important to people, seem interesting. And today, the circulation is over 9 million, and it's  
24 published in 32 different languages. That's only one of the major contributions that  
25 Grosvenor made. The second one was with--was to the National Park System. After a trip  
26 to the West in 1915, he used the magazine to raise public awareness about the need to  
27 protect our wild lands and was an advocate for expanding our national parks. He used  
28 society funds to purchase a part of what is now Sequoia National Forest. He also worked  
29 with George Mather to develop the legislation that led to the National Park Service. Now,  
30 coming back to Wild Acres and this hearing, I would propose that you have a chance to  
31 save this property in the same way that Gilbert Grosvenor worked to save the natural  
32 treasures. It's almost a parallelism. And please recall, as you consider the 16.1 acres  
33 unanimously recommended by the HPC, this was a country estate. And to feel like you're  
34 in the country, you need quiet, you need green, and you do need trees, contrary to maybe  
35 an ironic comment made by another witness. I submit that if you only protect 5 acres or  
36 1.4 acres, you might as well take these buildings and put them on the National Mall.  
37 They're very interesting. They're very beautiful, but you completely lose what is the  
38 country estate and the very thing that Gilbert Grosvenor was seeking when he moved out  
39 from Washington to Montgomery County, which in those days seemed as bucolic and  
40 idyllic as maybe West Virginia does to us today. On behalf of Fleming Park Community



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1 Association, thank you for your attention. We urge you to designate the 16.1 acres and  
2 leave future decisions to the Historic Preservation Committee as its new role. Thank you.

3  
4 **COUNCIL PRESIDENT ANDREWS:**

5 Thank you. Cheryl Leahy, of the Wildwood Manor Citizen's Association.

6  
7 **CHERYL LEAHY:**

8 Good afternoon. I'm Cheryl Leahy. I'm the President of the Wildwood Manor Citizen's  
9 Association. I'm going to tell you why I feel the caretaker's cottage is an important part of  
10 this designation--nomination. My family has lived on the--in the Grosvenor neighborhood  
11 for over a century. Maurice Leahy came from Ireland in the early 1900s and made his way  
12 to Bethesda, where he was hired by Gilbert Grosvenor to manage his country estate. He  
13 lived there with his wife in the caretaker's cottage on the property, and together they  
14 raised 8 children. Ed Leahy, my father-in-law was born in that caretaker's cottage, along  
15 with his 7 siblings until he enlisted in the army and went away to war. After the war, he  
16 returned home to Grosvenor Lane where he built a small bungalow, he married and raised  
17 his own family. Now, in turn, my husband and I are raising our family there. Ed told many  
18 stories of growing up on the Wild Acres estate. The most memorable is the story of  
19 shining Alexander Graham Bell's shoes. Mr. Bell would come to visit his daughter and  
20 son-in-law at the estate, and it always caused a great deal of excitement among the kids.  
21 Of course, they met a lot of very interesting people over the years, but Alexander Graham  
22 Bell, well, apparently he was quite a character. Ed also spoke fondly of Gilbert Grosvenor  
23 and his love of nature. Mr. Grosvenor once caught a young Ed throwing rocks at birds,  
24 and he scolded him, badly. The next day, Mr. Grosvenor appeared at the caretaker's  
25 cottage with a picture of the birds for Ed. The gesture touched my father-in-law deeply, the  
26 8th child of a poor Irish immigrant who had very few resources and certainly not any  
27 books. It instilled in him a lifelong love of birds. A lot has changed around Bethesda in the  
28 last hundred years. I'm very sad that the current owners of Wild Acres have changed their  
29 stance on sharing their beautiful resource with the community. Gone are the days when  
30 the owners proudly handed out brochures telling the history of the property and inviting  
31 residents to come hike in their woods. My husband and I used to spend lots of hours on  
32 the property, skating on the pond in the winters and walking our dogs and children through  
33 the forest. Although we are no longer welcome, we still walk Grosvenor Lane and the bike  
34 path that runs adjacent to the property and we still enjoy the beautiful vistas. Wild Acres is  
35 a rare gem, the estate of a locally and nationally significant person. I acknowledge the  
36 caretaker's cottage was built prior to the other structures; however, it's my understanding  
37 that the caretaker's cottage was built for the caretaker so he could oversee the building of  
38 the other structures on the property. For that reason, I think it's just as important as the  
39 rest of the property. It's integral to the whole thing. On behalf of Wildwood Manor and the  
40 Leahy family, I urge you to consider the 16 acres or more as recommended by the Historic  
41 Preservation Committee. Thank you.



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1 COUNCIL PRESIDENT ANDREWS:

2 Thank you for your testimony. Elke Jordon, speaking as an individual.

3  
4 ELKE JORDON:

5 Thank you. My name is Elke Jordon. I have lived on Fleming Avenue adjacent to the Wild  
6 Acres property since 1973. I am pleased to have this opportunity to testify in support of  
7 historic protection for the property-- ahem--including an adequate environmental setting to  
8 preserve the original intent and design. When I moved here in 1973, it was 20 years after  
9 emigrating to this country from England. I was charmed to find a property next door that  
10 reminded me of an English country estate. The Renewable Natural Resources Foundation  
11 had just taken over Wild Acres and made available trails on their property. For many  
12 years, I enjoyed walking there. I was impressed by the beauty of the buildings and by how  
13 well they were situated on the land. As is typical for English country houses, the buildings  
14 are protected from view but emerge as you approach along a winding driveway. A  
15 caretaker cottage is near the entrance. The driveway ends in a circle to allow the easy  
16 flow of traffic in front of the house and access to the carriage house next door. In the back,  
17 there is a stately lawn with grand, sweeping views. It is obvious to the viewer that the  
18 relationship between the various structures and their environmental setting is part of the  
19 design and critical to the overall feel of the place. In 2000, the Maryland Historical Trust  
20 found Wild Acres eligible for listing on the National Register of Historic Places. In 2008,  
21 the Historic Preservation Commission voted unanimously to designate Wild Acres to the  
22 Master Plan for Historic Preservation and included the entire remaining environmental  
23 setting not already protected under Legacy Open Space or occupied by office building.  
24 Later that year, the Montgomery County Planning Board concurred with that  
25 recommendation but reduced the environmental setting significantly to about 5 acres. The  
26 Board's recommendation would reduce the North and South vistas, cut off half the  
27 driveway, and leave the caretaker's cottage isolated on a small island of land. The  
28 suggestion was made that the cottage could be moved. I believe the reduction in the  
29 environmental setting would be a mistake. It would destroy the very features that make  
30 Wild Acres special as an example of a country estate. The look and feel of the original  
31 design would be destroyed. And once that happens, it cannot be restored and we will  
32 have lost a rare and precious historic gem. Therefore, I urge the Council to support the  
33 original recommendation from the Historic Preservation Commission to designate the  
34 mansion, the carriage house, and the caretaker cottage with sufficient environmental  
35 setting to preserve the intent of the design and the feel of an early 20th-century mansion.  
36 My written testimony has a map showing the 2 environmental settings. Thank you very  
37 much.

38  
39 COUNCIL PRESIDENT ANDREWS:

40 Thank you very much. And our final speaker on this public hearing is Lisa Goenner. Did I  
41 pronounce that right?





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1 LISA GOENNER:

2 Lisa Goenner. You did. Thank you.

4 COUNCIL PRESIDENT ANDREWS:

5 OK.

7 LISA GOENNER:

8 I'm speaking today in strong support of this nomination. My name's Lisa Goenner. One  
9 way or another, I think we've all experienced the tension between preservation and  
10 progress. I grew up not far from the Grosvenor Estate, and I remember the shock I felt as  
11 a kid seeing our huge front yard bulldozed away in the first stages of widening Old  
12 Georgetown Road. On that day, I saw progress up close, and I learned the practical  
13 meaning of eminent domain. But we're not talking here today about a taking, an all-or-  
14 nothing proposition. Historic designation isn't meant to do that. It's meant to be a  
15 cooperative process that does allow for compatible development while still conserving  
16 important historic resources. It's too easy to dismiss any nomination for historic  
17 designation as a ploy to block development. Our community did oppose one development  
18 plan for the Grosvenor Estate. In our view, that plan for Nations Academy with its  
19 enormous and inflexible enrollment scheme promised overwhelming traffic and would  
20 have put enormous pressure on local infrastructure. But blocking development is not the  
21 intent of county preservation laws, and it's certainly not the aim of this nomination. By the  
22 same token, a valuable historic resource shouldn't be compromised just to accommodate  
23 a developer. HPC's original recommendation for a 16.1 acre setting for Wild Acres was  
24 slashed by more than 2/3. There's no apparent logic in the reduced setting or in allowing  
25 the historically significant caretaker's cottage to be moved around like a trailer. It makes  
26 sense only in the context of the development plan that Nations Academy had on the table  
27 when the reduction was decided. The cottage and grounds were in the way of what they  
28 wanted to do, but the location and setting of structures on the estate were at the heart of  
29 Heaton and Grosvenor's planned vision for Wild Acres. So I think our real focus needs to  
30 be on keeping things in their proper context. It's really what Historic Preservation is all  
31 about anyway-- helping communities to grow within the tangible context of their unique  
32 history. Too many of the historic landmarks that illustrate our local history have already  
33 disappeared from Bethesda's landscape. They're places that define Bethesda's roots as a  
34 rural country community, a small town, and home to some great national figures from  
35 years gone by. Grosvenor's Estate illustrates all 3 in one extraordinary setting. The  
36 overwhelming evidence before you is that the Grosvenor property should be designated  
37 an historic resource and that the architectural resources should be preserved in their  
38 proper context. So I urge you to look at the property's historic importance from its broader  
39 perspective and not just through the narrow lens of a surveyor's transit. I ask the County  
40 Council to confirm the original unanimous recommendation of the Historic Preservation  
41 Commission by preserving the mansion, carriage house, and caretaker's cottage, in situ,



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1 and with the 16.1 acre setting that will appropriately conserve Wild Acres for Bethesda  
2 and Montgomery County. Thank you.

3  
4 COUNCIL PRESIDENT ANDREWS:

5 Thank you. Council Vice President Berliner, and then Councilmember Floreen.

6  
7 COUNCIL VICE PRESIDENT BERLINER:

8 I just want to commend the members of this community. I think you presented a very  
9 powerful and very professional testimony to the Council. And this matter will be going to  
10 the PHED committee before it comes back to the full Council. I urge you to participate fully  
11 there. I can assure you that I will be attending, as I often do, in PHED committee  
12 deliberations with respect to this matter. But thank you for your testimony. It was very well  
13 done.

14  
15 COUNCIL PRESIDENT ANDREWS:

16 Well said. All right, Councilmember Floreen.

17  
18 COUNCILMEMBER FLOREEN:

19 Thank you. Since we have you all here, I've met with a number of you and all--most of the  
20 parties associated with this, one way or the other. And I'm just trying to understand from  
21 the community's perspective how this initiative interrelates with the other approvals that  
22 the property is already subject to. There's a site plan. There's the Legacy Open Space  
23 issue. There are already certain controls that basically preserve a good portion of the  
24 property, perhaps not all the parts that you would like to see, but perhaps you could  
25 share--I know--I understand in the context of the school--I just observed from what I read  
26 in the paper about some of the issues associated with that. But that part not being in front  
27 of us, with not taking that on, perhaps you could share with us what you see this achieving  
28 that the current rules that apply to this property--it's been through a fair number of reviews  
29 one way or the other--what this achieves that is not already there. There are areas that  
30 are preserved. The Planning Board has had its say about certain things. The Court of  
31 Appeals has had its say. Certain properties have been acquired for parkland over time in  
32 the Legacy Open Space. So, many, many hands have been at work here over the years,  
33 no doubt, due to your engagement as well.

34  
35 JULIA WELLER:

36 If I could just respond to that. I've done a lot of research on the property because it's a  
37 very interesting property, and some of it has been looking at the prior special exception.  
38 It's my understanding from looking at those materials that the Renewable Natural  
39 Resources Foundation and the Society of American Foresters have always said that they  
40 would take care of the house. They recognize the value of the Grosvenor mansion and the  
41 historical importance of this estate to the community. So they've always said in the



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1 materials that they've provided when they requested their special exception that they  
2 would be good stewards of the property. So my assumption has to be that when the  
3 County Council looked at this before when the special exception for the 2 office buildings  
4 was put before them that they took that into account.

5  
6 COUNCILMEMBER FLOREEN:

7 That's something we do. That would have been done by the Board of Appeals.

8  
9 JULIA WELLER:

10 All right then, Board of Appeals. But somebody took that into account, because they made  
11 a point of saying that. And they made a point of saying this in materials that they made  
12 available to the public. So they have been good stewards, and I understand they have  
13 financial problems now, but they have made it clear in the past that they would take care  
14 of this property. So I think when you ask about how this relationship between an existing  
15 special exception and what we're asking for is we see now that there's been a change in  
16 their approach to this property and that maybe it needs more of a protection than can be  
17 guaranteed through what they've said in the past and in the special exception hearings.

18  
19 COUNCILMEMBER FLOREEN:

20 Anybody else? OK. Well, I'm just trying, again, I'm just trying to understand what you feel it  
21 is not--is lacking from the set of current--I mean, if someone were to go back and change  
22 the special exception, it would be subject to public engagement, full process. And I guess  
23 you were involved in that. So that's a great education. So you know that process. And was  
24 it your feeling that that didn't permit the right conversation about this property?

25  
26 JULIA WELLER:

27 Well, I think the point was made earlier that they already have a special exception that  
28 allows them to do further development--

29  
30 COUNCILMEMBER FLOREEN:

31 Right, yeah.

32  
33 JULIA WELLER:

34 on the property. That special exception was granted over 30 years ago before the  
35 appreciation for both Gilbert Grosvenor and the architect Arthur B. Heaton were really well  
36 understood. The passage of time always changes one's historical appreciation of  
37 something. As I said in one of my pleadings, a Sistine Chapel may become a valuable  
38 gem immediately when it's finished, but that's not true of a log cabin which only becomes  
39 valuable with the passage of years and when they disappear and you've only got one left.  
40 So, what happened 30 years ago should not be dispositive of what we consider to be  
41 important today with regard to the historic and cultural and architectural value of this



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1 property. So, yes, we do believe that there needs to be more protection today than can be  
2 provided, because if there is already a special exception that allows development--

3  
4 COUNCILMEMBER FLOREEN:  
5 Yes.

6  
7 JULIA WELLER:  
8 So that's my point--that was my reason for ... this nomination, because we needed to have  
9 protection now.

10  
11 COUNCILMEMBER FLOREEN:  
12 Well, then, I guess I'll ask the staff of when we take this up to address this question  
13 because it's just not clear to me--their having certain approvals already having been in  
14 place for this... and certain constraints there and certain permissions there-- what this  
15 process adds in terms of involvement. And certainly, HPC would be involved now, but  
16 decisions have been made as I understand it. I don't know--so I guess we'll--if you could  
17 plan to do that in...

18  
19 JEFF ZYONTZ:  
20 I will.

21  
22 COUNCILMEMBER FLOREEN:  
23 That would be helpful to me.

24  
25 JEFF ZYONTZ:  
26 As long as you gave me the 2 seconds, this is scheduled for the PHED committee on  
27 February 2nd. There's a mistake in the-- or we have the opportunity on that date, so the  
28 committee can do it on that date. But I certainly will be prepared--

29  
30 COUNCILMEMBER FLOREEN:  
31 OK.

32  
33 JEFF ZYONTZ:  
34 with the development stuff.

35  
36 COUNCIL PRESIDENT ANDREWS:  
37 OK.

38  
39 COUNCILMEMBER FLOREEN:  
40 Great. OK, well--



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1 COUNCIL PRESIDENT ANDREWS:

2 Council Vice President Berliner.

3  
4 COUNCIL VICE PRESIDENT BERLINER:

5 Let me just ask one more question. I was struck, Miss Jordon--I'm sorry, Miss Jordon. I  
6 was grateful for your testimony, particularly page 7 of your testimony, with respect to  
7 trying--I think it's the only place--there may be other folks that did this--that allows us to  
8 see the combination of the parkland, Legacy Open Space, what is sought to be preserved  
9 here, and what would be remaining for potential development. I would like staff, if you  
10 could, to look at that and have a conversation with the developer so that we have an  
11 understanding of what their potential is, what could go there, to the extent to which we are  
12 limiting their future development rights, recognizing of course that it is a constraint not a  
13 prohibition, because, as has been observed by the Historic Preservation Commission, it  
14 has agreed to allow for compatible development presumably even within that 19 acres--16  
15 acres. Excuse me. But I do think this picture is important, and we look forward to your  
16 conversations in the Council with respect to that potential. Yes, ma'am.

17  
18 ELKE JORDON:

19 As was pointed out by other speakers, there is already development on the property of  
20 modern office buildings.

21  
22 COUNCIL VICE PRESIDENT BERLINER:

23 Right. I think those two--

24  
25 ELKE JORDON:

26 I would just like to point out that those were very sensitively placed. They do not interfere  
27 with the historic context. So it is entirely possible to do development in that way.

28  
29 COUNCIL VICE PRESIDENT BERLINER:

30 I've been on the property many, many times. There's a nonprofit there that is near and  
31 dear to my heart, so I am familiar with it. And I don't particularly, with the greatest respect,  
32 find those buildings to be particularly aesthetically, you know, magnificent, but they are  
33 placed well.

34  
35 ELKE JORDON:

36 You mean the new ones?

37  
38 COUNCIL VICE PRESIDENT BERLINER:

39 Yes.

40  
41 ELKE JORDON:



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1 Placed out of view.

2  
3 COUNCIL VICE PRESIDENT BERLINER:

4 Yes, they're placed out of view so in that way, they are lovely, yes. Thank you.

5  
6 COUNCIL PRESIDENT ANDREWS:

7 There are no more questions? Thank you all for your testimony. That concludes this public  
8 hearing. We have a few more. All right, we do.

9  
10 MAN:

11 We have some more witnesses.

12  
13 COUNCIL PRESIDENT ANDREWS:

14 We have one more public hearing with some witnesses, but this next one does not. Good  
15 afternoon, ladies and gentlemen, this is a public hearing on a special appropriation to the  
16 Montgomery County Public Schools FY09 Capital Budget and Amendment to the FY09-14  
17 Capital Improvements Program for emergency repairs at various schools. \$252,000 for  
18 HVAC replacement, \$1.25 million for planned life cycle asset replacement, and \$1.5  
19 million for stormwater management. The persons wishing to submit additional comments  
20 should do so by the close of business today, January 13, 2009. An education committee  
21 work session is tentatively scheduled for Thursday, January 15th at 9:30 A.M. Please call  
22 (240) 777-7900 for information. There are no speakers for this hearing, and that  
23 concludes this public hearing.

24  
25 COUNCIL VICE PRESIDENT BERLINER:

26 We're good.

27  
28 COUNCIL PRESIDENT ANDREWS:

29 Next item. This is a public hearing, item number 12, on Zoning Text Amendment 08-17,  
30 Wheaton Central Business Districts, boundaries that would revise the boundaries of the  
31 Wheaton Central Business District. Persons wishing to submit additional comments  
32 should do so by the close of business Thursday, January 29, 2009. A Planning, Housing,  
33 and Economic Development Committee work session is tentatively scheduled for Monday,  
34 February 2nd at 3:00. Please call (240) 777-7900 for information. We do have 3 speakers  
35 signed up for this hearing. Rob Klein, representing the County Executive; Greg Russ,  
36 representing the Montgomery County Planning Board; and Harold Weinberg, speaking as  
37 an individual. Good afternoon, everybody. You each have up to 3 minutes, and please be  
38 sure to press the button before you speak and introduce yourselves.

39  
40 ROB KLEIN:



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1 Good afternoon. My name is Rob Klein. I am Director of the Redevelopment Program, and  
2 I'm here to testify on behalf of the County Executive in support of Zoning Text Amendment  
3 08-17, which expands the Wheaton Central Business District boundaries as  
4 recommended in the limited amendment to the Sector Plan for the Central Business  
5 District and vicinity. As the Zoning Text Amendment is another critical step in bringing land  
6 use control into conforming with the revitalization needs of Wheaton, it helps to facilitate  
7 mixed-use development and affordable housing where it's needed. I thank the County  
8 Council for its continuing support for Wheaton redevelopment.

9  
10 COUNCIL PRESIDENT ANDREWS:

11 Thank you. Next speaker is Greg Russ, representing the Planning Board.

12  
13 COUNCIL VICE PRESIDENT BERLINER:

14 Can you be as short as he was?

15  
16 GREG RUSS:

17 Pretty short, yes. For the record, Greg Russ, representing the Montgomery County  
18 Planning Board. The Planning Board did review this Text Amendment on January 8th. It  
19 unanimously recommended approval of the ZTA. The ZTA proposes to revise the  
20 boundaries of the Wheaton Central Business District to implement the recommendations  
21 of the limited amendment to the Wheaton Central Business District's Sector Plan  
22 approved by the Council on December 9th. The Sector Plan Amendment recommends  
23 expanding the CBD boundary to include the remaining portion of parcel "C" of the Villa  
24 Verde subdivision and the unsubdivided Parcel 920, owned by WMATA. The map,  
25 included in the attached technical staff report, depicts the proposed boundary  
26 modifications. Thank you.

27  
28 COUNCIL PRESIDENT ANDREWS:

29 Thank you. And our next speaker is Harold Weinberg, speaking as an individual. Good  
30 afternoon.

31  
32 HAROLD WEINBERG:

33 Hi. Thank you. From the beginning, this has been about one and only one private property  
34 owner--Avalon Bay--benefitting from your actions. But from the previous requests,  
35 including rezoning that property to (inaudible) and 2 previous Zoning Text Amendments  
36 specifically proposed for this project, Park and Planning and the Council knew it was  
37 illegal, as those requests were turned down, the last one because it appeared to be illegal  
38 spot zoning. Dr. Hanson then proposed a new plan to get this project done while in a  
39 PHED meeting with the Council, redraw the CBD lines under a limited Sector Plan  
40 amendment-- so limited it will benefit one private property owner. That plan started and  
41 finished in only a few months. It must have the word "comprehensive" in it a dozen times.



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1 But that idea started to look a little pale at the Planning Board's last work session for that  
2 Zoning Text Amendment, and they recommended that you add the public WMATA  
3 property to the "study area" to put a little lipstick on that pale area. But still, underneath it  
4 all, you're acting to benefit one single private for-profit entity. This Zoning Text  
5 Amendment is simply special legislation for one property owner. Meanwhile, the real  
6 Sector Plan is underway, probably going to take 18-24 months, and has the word  
7 "comprehensive" in it only 2 or 3 times. Well, you can't fight City Hall, as they say, and  
8 there is no stopping this Council and the big developer Avalon Bay. At the same time the  
9 Council was approving Avalon Bay's request, Councilmembers did ask me to submit into  
10 the record my concerns other than my obvious objection to this illegal process. Therefore I  
11 submitted items that I had hoped would protect our large investment that has been there  
12 since 1966--a 19,000 square foot office building built in an office setting that is about to be  
13 surrounded by apartments through a radical rezoning from office to apartments. Some of  
14 my ideas were accepted but only in general concept terms, as my very real issues were  
15 termed too specific for the limited plan, specifics you said that were to be addressed later  
16 during Avalon Bay's site and project plan hearings. But in a recent letter dated December  
17 29, 2008 from Avalon Bay's legal council to County departments, I learn of a very  
18 productive meeting held in December between Avalon Bay and Park and Planning staff to  
19 iron out compatibility issues with my property so that they can submit a "flawless plan".  
20 But I wasn't at that meeting, nor was I asked to contribute what I thought were  
21 compatibility issues. I just can't wait to see the consideration I'll be afforded at the done  
22 deal, flawless site plan and project plan hearings. I'd like to edit my opinion, previous  
23 opinion that this is for one property owner. This was for one property owner at the total  
24 disregard of an existing adjacent property owner with a multimillion-dollar investment. I'm  
25 asking that you help protect this family investment, and I urge you to vote against the  
26 Zoning Text Amendment. Thank you for your time.

27  
28 COUNCIL PRESIDENT ANDREWS:  
29 Thank you.

30  
31 [Alarm beeps]

32  
33 And we have a couple of comments or questions. First Councilmember Elrich, and then  
34 Vice President Berliner.

35  
36 COUNCILMEMBER ELRICH:  
37 Question for Park and Planning. Did the meeting he refer to take place?

38  
39 GREG RUSS:  
40 Uh, I'm not aware of this. I'm not involved with the site development side of planning, so I  
41 couldn't address that for you.





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1 COUNCILMEMBER ELRICH:

2 If one were to develop a flawless plan that addressed someone's concerns, wouldn't it be  
3 reasonable that person be a party to such a meeting so that you might have some  
4 assurance that, in fact, that's what was being accomplished--

5  
6 GREG RUSS:

7 I think--

8  
9 COUNCILMEMBER ELRICH:

10 in practice?

11  
12 GREG RUSS:

13 No. I think in terms of a development proposal, typically you address issues related to  
14 surrounding property, sure. That's typical of any kind of development, be it rezoning or  
15 project plan or site plan, whatever. I mean, sure, that's typically a part of the review.

16  
17 COUNCILMEMBER ELRICH:

18 A question for Mr. Klein--

19  
20 GREG RUSS:

21 Well, I mean, sure. That's typical planning. I mean, you can provide mitigation for adjacent  
22 properties without them being in a room. As a planner, you know what kinds of things,  
23 kinds of transitions, buffers, et cetera, you would typically place on properties. But in terms  
24 of if there isn't a development plan in place yet, there's plenty of opportunity for everybody  
25 to be involved in it, so...I mean, that's all I can say. I don't know anything about a meeting,  
26 et cetera, but that's--that's--from a planning perspective, everybody's involved in that,  
27 whether it's at one meeting with a specific group or another with another group or a  
28 meeting that comprehensively includes everybody.

29  
30 COUNCILMEMBER ELRICH:

31 It doesn't sound like the gentleman here has been either at that meeting or any  
32 subsequent meeting to see whether or not--what all was accomplished at that meeting  
33 would, in fact, satisfy what the meeting purports to-- I'd like a copy of the e-mail if you...  
34 OK.

35  
36 GREG RUSS:

37 Let me just say one other thing here. If there is a project plan within the Central Business  
38 District that will be reviewed, obviously that can't occur yet until--in terms of actually going  
39 to the Planning Board until the property's actually zoned to that. So, there's ample time for  
40 any kind of discussion to occur. And that's my thought about it.



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1 COUNCILMEMBER ELRICH:

2 OK. My question for Mr. Klein is, what's the story with Avalon Bay? Because I've heard  
3 various things.

4  
5 ROB KLEIN:

6 Avalon Bay has written us and also has copied the chairs of our 3 committees. They've  
7 made it clear that they're planning to move ahead as quickly as they can through the  
8 process. It's one of the projects the company has decided to keep.

9  
10 COUNCILMEMBER ELRICH:

11 And would you be able to share that letter with us that's--

12  
13 ROB KLEIN:

14 Most certainly.

15  
16 COUNCILMEMBER ELRICH:

17 OK. Yeah. Thank you.

18  
19 COUNCIL PRESIDENT ANDREWS:

20 Thank you all. There is a work session scheduled for February 2nd of the PHED  
21 committee on this Zoning Text Amendment. And we will move on to the next item. Thank  
22 you. OK. Item 13 is a public hearing on Resolution to amend Transportation Fees,  
23 Charges, and Fares. Action is scheduled immediately following this hearing. There are no  
24 speakers for this hearing, and the Transportation and Envir-- The T.I. and E. committee--

25  
26 COUNCIL VICE PRESIDENT BERLINER:

27 T&E. T&E.

28  
29 COUNCIL PRESIDENT ANDREWS:

30 Can we still call it T&E?

31  
32 COUNCILMEMBER FLOREEN:

33 T&E.

34  
35 COUNCIL VICE PRESIDENT BERLINER:

36 Aww!

37  
38 COUNCIL PRESIDENT ANDREWS:

39 The T&E committee recommends approval. All right. Would the chair of the T&E  
40 committee like to make any comments?



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1 COUNCIL VICE PRESIDENT BERLINER:

2 None.

4 COUNCILMEMBER Floreen:

5 Uh, no. Glenn, you want to walk us through this?

7 GLENN ORLIN:

8 Sure. And Carolyn Biggins and Bill Sully????? from Transit Services are here, too.

9 Basically, there's 2 things requested from the Executive-- one is to make RIDE ON's  
10 transfer policy consistent with what WMATA is now doing, which is to have an equalized  
11 fare transfer between bus and rail or rail and bus. Right now, if you take the bus to the rail  
12 station, you pay full fare on the bus, full fare on the rail. And returning, you pay full fare on  
13 the rail, but you get a 90% discount on the bus trip. This would make it so that if you go  
14 from bus to rail, you've got to pay full fare on the bus, a 50-cent discount on the rail trip.  
15 And returning, it's the same. It's just reversed. Full fare on the rail, 50 cent transfer on the  
16 fare--transfer discount on the--fare discount on the transfer to the bus. This would actually  
17 end up producing a small increase in revenue to RIDE ON, \$380,000 annually, about  
18 \$175,000 in this fiscal year. But the most important reason for doing this is just frankly  
19 being consistent with WMATA. Metrobus and Metrorail are doing this right now. It's  
20 already in effect. The other change is to eliminate the \$25 ticket. The ticket no longer has  
21 a discount since SmartTrip's RIDE ON fare is \$1.25 a ride. The Executive himself--this  
22 does not require Council action--is eliminating paper transfers consistent with WMATA's  
23 policy in order to eliminate fraudulent use of these transfers. So, the committee reviewed  
24 this in early December. Just before recess, they unanimously recommended approval of  
25 it. It's before you now.

27 COUNCIL PRESIDENT ANDREWS:

28 OK, any questions or discussion? Don't see any. All right, all in favor of the T&E  
29 committee recommendation on this item, please raise your hand. That's unanimous  
30 among those present, which includes Councilmember Elrich, Councilmember  
31 Trachtenberg, Councilmember Floreen, myself, Council Vice President Berliner, and  
32 Councilmember Knapp. That's 6-0. Thank you. Our next item is a public hearing on a  
33 supplemental appropriation to the County Government's FY09 Capital Budget,  
34 Amendment to the FY09-14 Capital Improvements Program, Department of Technology  
35 Services. \$55,000 for Public Safety Communications System upgrade and modernization.  
36 The source is a Federal grant. Action is scheduled immediately following this hearing. I  
37 don't believe there's any match required for this grant. Minna? No match? No match. OK.  
38 And there are no speakers for this hearing. So I'm looking for a motion on this.

40 COUNCIL VICE PRESIDENT BERLINER:

41 So moved.



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1 COUNCILMEMBER FLOREEN:

2 Second.

3  
4 COUNCIL PRESIDENT ANDREWS:

5 Moved by Council Vice President Berliner, seconded by Councilmember Floreen. I don't  
6 see any discussion, questions. All in favor of this appropriation, supplemental  
7 appropriation, which requires 5 votes, please raise your hand. That is unanimous among  
8 those present, which includes Councilmembers Elrich, Trachtenberg, Floreen, myself,  
9 Council Vice President Berliner, and Councilmember Knapp. That's 6-0. That is approved.  
10 And our last public hearing of the day before we go and interview a number of people for  
11 the Board of Appeals is the public hearing on a supplemental appropriation to the County  
12 Government's FY09's operating budget for the Montgomery County Fire and Rescue  
13 Service, \$317,251 for the Urban Area Security Initiative, UASI, Mass Casualty Support  
14 Unit Medical Supplies Grant Award. Action is scheduled immediately following this  
15 hearing. There are no speakers, so the hearing is closed. There is no match required for  
16 this either. Federal grant, and--

17  
18 COUNCIL VICE PRESIDENT BERLINER:

19 So moved.

20  
21 COUNCILMEMBER TRACHTENBERG:

22 Second.

23  
24 COUNCIL PRESIDENT ANDREWS:

25 Council Vice President Berliner moves. Approval. Second by Councilmember  
26 Trachtenberg. All in favor of this supplemental appropriation, please raise your hand. That  
27 is unanimous among all 6 here: Councilmember Elrich, Councilmember Trachtenberg,  
28 Councilmember Floreen, myself, Council Vice President Berliner, and Councilmember  
29 Knapp. It is approved 6-0. And that's it for up here, and we're now going to move to the  
30 5th floor conference room to interview members. We'll start at quarter to 4:00. 5-minute  
31 break.

32  
33 COUNCILMEMBER FLOREEN:

34 Five?

35  
36 COUNCIL PRESIDENT ANDREWS:

37 5-minute break.

38  
39 COUNCILMEMBER ELRICH:

40 5 minutes? Oh, come on!